Hot Topics in Practice of Medicine and Dentistry

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What’s Hot?

- Patient Protection & Affordable Care Act
- Affordable Care Act Implementation
- Out-of-network Referrals
- Medicare-Medicaid Anti-Fraud & Abuse Amendments
- Anti-Kickback Statute
- Management Service Organizations
- Anti-Referral Regulations (Stark II)
- The False Claims Act (FCA)
- Increased Joint Venture Activity and Market Consolidation
- Occupational Safety and Health Administration Regulations (OSHA)
- Dental Support Organizations
- Joint Commission on Accreditation of Healthcare Organizations (JCAHO)
- Private Equity
- Health Insurance Portability Accountability Act (HIPAA)
- Telemedicine
- Health Information Technology for Economic Clinical Health Act (HITECH)
- Anti-Markup Rule
- Overpayments and Self-disclosure
- Provider Reimbursement and Emphasis on Quality Care
- State Licensure Laws
- Corporate Practice of Medicine
- Anti-Trust Laws
- The Health Care Quality Improvement Act
- Physician Payment Sunshine Act (Sunshine Act)
- Reimbursements
## Hot Issues for ByrdAdatto Clients

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Strategies

Operational Strategies

• Fee Schedule
• Payor Mix
• Policy & Procedures
• Out of Network

Policy & Procedures

1. Tighten Billing verification practices
2. Tighten Patient Collection Policies
   • Creative Manner to collect delinquent patient’s bill
3. Monitor Insurance Contracts Closely
4. If using billing company understand collection and write off policies
OON Reimbursement

- Usual, Customary & Reasonable ("UCR")
  - typical fees charged by providers in the insured area
  - typical fees compiled by independent rating services
  - typical fees compiled by the insurance company/third-party administrator

- Lack of clear definition creates different definitions:
  - Amount provider has accepted as payment from other payors (which can include or exclude Medicare and Medicaid)
  - Value calculated by a third party database
  - Multiplier of Medicare rates
  - Amount ERISA Plan determines to be the reasonable charge for comparable services, treatment, or materials in a geographical area
OON Pitfalls

• Payment delays
  • Prompt Pay laws don’t apply
  • 90-180 day timeframes
  • Requires provider initiative and appeals

• Payor confusion
  • Same NPI under two different EINs
  • Differentiation between services

• Increased patient responsibility
  • Balance billing & surprise medical bills
    • Patient dissatisfaction
  • Patient payment delinquency
    • Billing verification practices
    • Deposits or up front payments
    • Creative patient collection policies
  • Duty to collect
    • Good faith efforts
    • Collection and write-off policies
    • Waiver of co-pays
    • Discount or prompt pay programs
Control of Referral

• Typical Contract Language
  • Physician shall render services to Members only at Participating Hospitals or Providers approved by Company

• Aetna has been aggressively suing doctors and surgery centers that the doctors partly own in California, Texas, New York and New Jersey for allegedly overbilling insured patients who go outside the company’s network
California - Lawsuit

• Aetna sued 7 surgery centers and related individuals

• Allegations
  • Illegally induced Aetna’s in-network doctors to refer patients to OON
  • “Cherry Picked” Patients
  • Waives or reduces copayments so the patient pays no more than an in-network
  • Did not disclose ownership

• April 14, 2016
  • Jury awarded Aetna Inc. over $37.4 million in damages after finding a network of Northern California surgical centers overbilled the insurer for out-of-network procedures through a complex scheme in which referring physicians received substantial kickbacks

Aetna Life Insurance Co. v. Bay Area Surgical Management LLC, No. 112-CV-217943, Santa Clara Superior Court (filed Feb. 2, 2012)
Department of Insurance - Mediation

- Participation is voluntary and initiated by patient.
- Eligibility
  - Coverage through insured PPO plan or Employees Retirement System of Texas
  - Claim is for a medical service or supply provided by OON hospital-based physician (such as a radiologist, anesthesiologist, a pathologist, an emergency department physician, or a neonatologist). For services provided on or after September 1, 2015, also includes an assistant surgeon.
  - Provided a medical service or supply in a hospital that is a preferred provider under preferred provider benefit plan.
  - Amount owed (not including copayments, deductibles, coinsurance, and amounts paid by the insurer or administrator directly to you), is
    - Before September 1, 2015, more than $1,000
    - On or after September 1, 2015, more than $500

Texas Medical Association Task Force

- Balance billing strategy recommendations to Senate Committee on Business and Commerce and House Committee on Insurance
- Broader application of mediation process and more transparency of potential OON costs
  - Increase state agency oversight of the adequacy of insurer networks.
  - Expanding current mediation process to include: (1) all out-of-network physicians, other health care professionals, and vendors providing services at a facility; and (2) any out-of-network hospital, outpatient hospital, ambulatory surgical center, free-standing emergency medical facility or department, and ground ambulance services.
  - Requiring insurer inform patient about the network status of the facility-based physicians and others who may bill for services prior to any preauthorized elective services.
  - Use of a standard form by physicians and providers to tell patients which physicians and providers might be involved in their care and how to contact them.
  - Requiring insurers selling PPOs to include clear and conspicuous notices relating to balance billing on websites, policy documents, and directories.
  - Requiring insurance brokers and agents to educate consumers about the inherent limitations of the plans they buy, especially their out-of-pocket responsibilities for care provided both in and out of network.
Diversification Strategies

- **MSO**
- **DSO**
- **Access Agreements**

- **What is a MSO**
  - Business that provides nonclinical services to physician
  - Commonly known for providing administrative services to physician practices, but services provided by particular MSOs can vary widely.
  - MSOs can specialize exclusively in a certain type of specialties and/or bundle their services with Electronic Health Records (EHR).

- **Why MSO**
  - Asset Protection
  - Non-Physician having ownership in an entity in the medical field
  - Legal structure to capture additional revenue
  - Control over business side vs clinical side
  - Common use of back office staff to lower overhead
  - Navigate regulation hurdles
Texas Private Medical Practice Model

- Standard acceptable medical ownership model for Texas (See Tex. Bus. Org. Code § § 301.003, 301.004, 301.007, 301.012)
Texas Prohibitive Model

- Corporate Practice of Medicine
- Supervision Of Staff (See Texas Medical Board Rules 185 and 193.6, and the Medical Practice Act § 157)
- Unlicensed Practice of Medicine (See Rockett v. Texas State Board of Medical Examiners, 287 S.W. 2d 190 (Tex. Civ. App - San Antonio 1965, writ ref'd)
MSO Model

Non-Doctors Ownership
Non-Doctors Ownership
Doctors

MSO

Payor

Non-Doctors

Ownership

Ownership

Payor

Ownership

MSA

Referral

Patients
Sub-MSO Model

- Payor Mix
- FMV of MSAs
- Form & Substance
- FMV of Ownership
- MSO 2 Overhead
DSO Model

Payor

Bills & Collect
On behalf of
Dental office

$$

Dental Office

DSA

$$

Dental Support Organization

Owners

Dentist

Non-
dentist

Owners
Dentistry in Texas

Corporate Practice of Dentistry

- A person cannot practice dentistry unless they are licensed by the State.
  - Tex. Occ. Code § 256.001

- One is deemed to be engaged in the practice of dentistry if he owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract with another person to practice dentistry.
  - Tex. Occ. Code § 251.003(a)(4)

Dental Support Organization (DSO)

- What is a DSO?
  - An entity that, under an agreement, provides two or more business support services to a dentist.
    - Tex. Bus. & Comm. Code § 73.001

- What are “business support services”?
  - office space, furnishings, and equipment
  - staff employed by the dental support organization
  - inventory or supplies, including dental equipment and supplies
  - information systems
  - marketing and advertising
  - financial services
  - accounting, bookkeeping, or monitoring or payment of accounts receivable
  - payroll or benefits administration
  - billing and collection for services and products
  - reporting and payment of federal or state taxes
  - administration of interest expense or indebtedness incurred to finance the operation of a business
  - insurance services
DSO Registration

• SB No. 519 – September 1, 2015
  • Established registration requirement for all DSOs operating in Texas
• Forms available on Texas Secretary of State Statutory Documents Forms Index (3801-3805)
  • Registrations expire annually on December 31 of each year.
  • Must file renewals by January 31.
  • If after January 31, DSO must register within 90 days after the date of execution of a dental support agreement.
• Initial Registrations
  • DSO that has entered into a dental support agreement prior to February 1, 2016 must be filed not later than January 31, 2017.
  • DSO that first enters into a dental support agreement on or after February 1, 2016 must be filed not later than the 90th day after the date the agreement is executed.

• Registration Content
  • Name and business address of DSO;
  • Name and business address of each Texas dentist with which DSO has entered into an agreement to provide two or more business support services;
  • Name of each dentist and each person who is not a dentist who owns 10 percent or more of the dental support organization;
  • List of all business support services provided to each dentist.

• Penalties
  • Civil penalty not to exceed $1,000.
  • Each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.
  • AG files suit to collect the civil penalty.
Access/Use Agreements

- Hospitals and ambulatory surgery centers ("ASC") have unused space available
- Desire to lease out such space to providers for use with their patients
- Legislative attempts over the years to authorize an ASC to share its license under a sublicense agreement with one or more designated physician groups that is entered into under the terms of a use agreement
  - 2009 Senate Bill 2151
  - 2011 Senate Bill 848
- Potential Roadblocks
  - Federal Stark
  - Anti-Kickback (Federal and State)
  - Insurance
  - State Agency Licensing
Sale of Practice Strategies

**Private Equity**
- Consolidation
- Letter of Intent
- APA vs SPA
- Employment Agreements
- Corporate Practice Of Medicine

**Medical Broker Deals**
- Services
  - practice value
  - transition assessment and planning
  - due diligence
  - practice operations
  - documents
- Horror Stories
Takeaways

1. Identify Your Client’s Risk
2. Think Big Picture
3. Creative
4. Conduct Due Diligence
5. Advisors (Financial/Legal/Accounting)
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