MESSENGER ARRANGEMENTS: COSTS AND BENEFITS

Jeff Miles

History

- Evolved as a result of the Maricopa decision
  - Prior thereto, PPO fees schedules were common
  - Question became: How do we establish prices now?
  - Maricopa decree ambiguous
  - Numerous contortions
  - McGrath and Rule DOJ speeches
  - FTC Assistant Director suggestion
  - Appeared in the 1994 Health Care Statements

Are the Benefits Worth the Costs?

- Benefits:
  - Simplifies contracting and contract administration for both providers and payors
  - Markets providers’ services, increasing volume
  - Can educate physicians and their staffs so they make more rational contracting decisions

- Disadvantages:
  - <u>If operated lawfully, cannot increase providers' bargaining leverage</u>
  - Cumbersome to both providers and payors compared to fee-schedule contracting
  - Both providers and payors must be educated to the process
  - Some customers don't understand and don't like
  - Network can't force providers to participate
  - Difficult to operate lawfully, especially over time
  - Establishing panels can take a long time

- Not all providers participate in all contracts
- Cross-coverage issues when some providers don’t participate
- Referral problems
- Different prices for the same services
- Not really a “network”
- Little ability or incentive to pursue quality objectives
- Need IS infrastructure if network is large
- Need an antitrust attorney “on call”

Messed-Up Messengers

- Messenger, board members, contract committee, consultant, or attorney negotiates prices with payors
- Network creation, adoption, and use of fee schedule
- Adoption and use of fee schedule created by independent consultant
- Creation and use of "pricing parameters"
- Price negotiations with payors followed by messengering
- Contract committee review and disapproval of offers

- Board review and disapproval of offers
- Network demands that contracts include particular non-price terms
- Refusals to messenger all offers based on price considerations
- Network recommendations to reject offers
- Network recommendations to terminate individual contracts
- Network exclusivity

What Can the Messenger Do?

- “Discuss” non-price terms
  - But what are “non-price terms”?
  - How far can the “discussions” go?
- “Suggest” a model contract absent price terms
- Indicate which providers will contract at particular prices
- Indicate the number or percentage of providers customer will get at particular prices
- Provide objective assessments of non-price terms
- Provide network participants with truthful, objective comparative price information

- Provide participants with truthful, objective information about generic terms contracts should include
- Provide participants and their staffs with educational information about managed care, general contracting principles, and strategies
- Serve as liaison between providers and payors to solve disputes arising from the contract
- Contract as a network on behalf of participants through messenger process
- Market the network, suggesting to payors why they need all network members

Issues and Conclusion

- “Line” between price and non-price terms
- How are non-price terms and the contract, itself, established?
- Circumstances under which offers need not be messengered
- Specific activities in which messenger can and cannot engage—where’s the line?
- Are messenger arrangements a viable long-term strategy?