Physicians and Managed Care

The liability pitfalls created by managed care have important implications for all physicians.

All physicians at some time have encountered the onset of managed care largely in the form of falling reimbursements. Some specialties are more insulated than others; for example, anesthesiologists do not function as traditional gatekeepers nor do they need to apply frequently for authorization consents. Even so, there are aspects of managed care that have an effect on any specialty.

Advocacy and Cost Containment

An additional role for the physician is that of patient advocate and intermediary whenever a dispute arises between medical judgment and a health plan. This point is best illustrated by a 1986 seminal court case that occurred in California. Wickline vs. State of California involved Medi-Cal’s refusal to authorize a more prolonged stay for a woman who was required to be discharged from the hospital following vascular surgery. (Medi-Cal is the state’s medical assistance program.)

The surgeon and family practitioner wrote Mrs. Wickline’s discharge orders without further attempts to obtain authorization for additional recuperative hospitalization. During her recovery, Mrs. Wickline’s leg developed a loss of circulation and was subsequently amputated. The surgeon agreed that the leg’s deteriorating condition would have been observed and corrected if the patient had remained in the hospital longer. Mrs. Wickline sued Medi-Cal and won, but the California Court of Appeals reversed the decision. The appellate court ruled that the physicians were in a better position than Medi-Cal to determine the appropriate length of hospitalization. (Medi-Cal is the state’s medical assistance program.)

The message from the Wickline case is clear: You are expected to exercise independent medical judgment in the best interest of your patients—regardless of the influence of third-party payers. The Wickline case demonstrates that a physician who complies with limitations imposed by a third-party payer or gatekeeper—when his or her medical judgment dictates otherwise—is ultimately responsible for the patient’s care.

What does that mean in practical terms? When disagreements occur, doctors are responsible for documenting and being able to prove that they made every effort on behalf of the patient. You are strongly advised to keep detailed notes of explanations to patients, as well as notes on discussions with payers’ decision-making personnel. If the patient refuses care, an informed refusal process must be in place. Most importantly, whenever possible, you should provide optimal medical care and worry about reimbursement later.

Cost vs. Care

In an effort to reduce costs, physicians in a managed care plan might be encouraged to reduce the number of specialty referrals or laboratory tests. In such instances, physicians may again find themselves in jeopardy.

If you believe a consultation and clearance are necessary for appropriate treatment, the consultation should not be withheld because of cost containment concerns or reluctance on the part of primary care gatekeepers. Treatment rendered to all patients must meet the same standard of care regardless of the nature of their health plans. Insist on laboratory workups, chest x-rays, and electrocardiograms when appropriate.

Another step is to contact the medical director of the managed care organization (MCO) and make the case for the medically necessary therapy, test, surgery, or other therapeutic modality. A conversation should be held with the patient explaining that the MCO has denied coverage for the medical treatment, but the physician feels the therapy is needed. This would lead to an informed consent process that allows the patient to make the decision about whether to proceed with the therapy and agree to pay for treatment not covered by insurance. Documentation of these conversations is essential.
Hold Harmless Agreements
Some managed care provider contracts include provisions stating that the contracting physician agrees to hold the MCO harmless if he or she is named in a malpractice claim. This provision may result in an assumption of personal liability by the doctor.

If a malpractice claim names a physician along with the managed care plan—even if the case is frivolous and ultimately dropped—the MCO can seek to recoup its defense costs from the physician. Expenses of codefendants are not covered by malpractice insurance, and, as a result of the hold harmless agreement, the MCO can demand expenses from the contracting physician. It is imperative that physicians and groups read their managed care contracts carefully to ensure that they understand all terms and conditions.

Summary
As the practice of medicine continues to change, doctors are being forced to address new challenges in limiting liability. If questions arise, contact our Patient Safety Department at (800) 421-2368, extension 1243, for assistance.