

In Focus

So What's In a Word-The Sequel

Our October 2008 *InFocus* described a budding controversy building over health insurance carriers' calculation of Usual, Customary and Reasonable (UCR) charges to reimburse non-network providers. This *InFocus* topic was prompted by news of the settling of three class action lawsuits against Health Net, whose provider networks cover 6.7M people. The plaintiffs argued that Health Net's reliance on UCR charges as calculated by United Health Care's Ingenix unit resulted in inadequate non-network provider reimbursement. The plaintiffs asserted that the charge data used by Ingenix was not sufficiently representative of actual provider charges. Health Net decided to settle those lawsuits by promising to pay the plaintiffs \$215M and also by agreeing to stop using UCR as its basis for non-network provider reimbursement.

A little digging uncovered the fact that every other major health insurance carrier (Aetna, Anthem, CIGNA and United most prominently) had been subpoenaed by New York Attorney General Andrew Cuomo regarding their respective use of Ingenix-based UCR. The October *In Focus* concluded with our recommendation that benefits managers discontinue reliance on UCR and replace it with a percentage of Medicare.

Since last October, the fur has continued to fly. On January 13, 2009, the New York Times reported that through a possible conflict of interest and manipulation of UCR data, "Attorney General Cuomo alleged that United, and its subsidiary Ingenix, engaged in a scheme to defraud consumers by systematically underpaying the nation's patients by hundreds of millions of dollars over the last decade." United assessed its chances in both the courts of law and public opinion and agreed to settle for a \$350M payment, including \$50M to be used to create a new reimbursement methodology to be administered by a university to be named later. Concurrently, health giant Aetna agreed to pay \$20M to help fund the university-based successor to Ingenix. And in late February, the Dow Jones News Wire reported that both Aetna and CIGNA were being sued in New Jersey for alleged misuse of UCR data and also that Attorney General Cuomo received additional UCR settlement agreements from New York insurers Independent Health (\$475k), HealthNowNewYork, Inc. (\$212k) and MVP Health Care Inc., (\$535k).

It is unclear exactly how (or even if) United, Ingenix and by implication many other health insurers "manipulated" the UCR data to "defraud" millions of patients over the last 15 years. What is increasingly clear is that continued reliance on past methods of determining UCR risks lawsuits by providers and patients. While *In Focus* is unaware of any employer being named as a co-defendant in the recent UCR lawsuits that may be nothing more than a matter of time. Making that point abundantly clear was A.G. Cuomo when he said, "We will not stop until the entire (health insurance) industry has been reformed in this regard."

But does all of this alleging of manipulating and defrauding miss the point? The fact is, we are well into our second decade of doctors accepting as payment in full a (shrinking) fraction of their billed charges. Take a look at a typical EOB and you will see that the doctor-accepted "covered charge" is often no more than one-half of the billed charge. Doctors have inflated their billed charge levels so much since the advent of PPO contracting that there is no longer any realistic relationship between what they bill and what they will accept from a PPO. Attorney General Cuomo (not to mention uncurious reporters at The New York Times and The Wall Street Journal) either doesn't know this (unlikely) or doesn't see much headline potential in this reality. Isn't this really just a billing war between providers, PPO networks and health plan sponsors - turning patients who go out of network into collateral damage? Providers get to say "we gave in to the PPOs and deeply discounted our fees." PPOs get to say, "We are great negotiators and are delivering discount value to our customers." Employers are able to say, "We are really smart buyers and are saving our company and employees lots of money off billed charges." In the meantime, employees who venture out-of-network (un-intentionally or otherwise) have received about as much priority as prison reform. Well, that is changing thanks to A.G. Cuomo - and its costing big bucks.

Unfortunately, absent the advent of governmental price controls, there isn't a lot to be done about this. As we recommended last October, employers can tell their plan administrators to change the payment method for out-of-network services to a percent of Medicare's reimbursement level, e.g., 125%. This avoids the whole debate about what is "usual", "customary" and "reasonable". However, that won't work if your TPA is run by Aetna because they won't budget off UCR or maybe United as well (because United tells some that they won't administer Medicare-based reimbursement and others that they will). But going to a percentage of Medicare will still leave employees exposed to large balance due amounts for billed charges above the Medicare-pegged allowable amounts. As always (though easier said than done) consumers need to first ask providers if they will accept their plan's eligible charge amount as payment in full.

They Said It!

Commenting on United Health Care's agreement to pay \$350M to patients allegedly harmed by its method of determining UCR charge levels:

"We believe the amount agreed to is inadequate and does not reflect as meaningful a settlement as could be negotiated", said plaintiff's attorney Barbara Quackenbos, whose law firm is suing health insurance companies.

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Frank Mulvaney - 27500 Detroit Rd., Suite 201, Westlake, OH, 44145, United States