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Relationships That Drive Results

How to Assess if Your ASC Should be In or Out of Network

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Out of Network Considerations

Key Indicators:

- ASC's financial performance is poor as a result of unfavorable contract rates
- ASC is subsidizing insurance company by providing services below cost
- ASC cannot make up losses on volumes – Negative margins
- Payors are unwilling to negotiate despite efforts of ASC Negotiator

Out of Network Considerations

- ASC has meaningful volume with other payors and can afford to have low paying volume move to the hospital
- There is access to OON benefits on the majority of products
- Physician users of ASC are supportive
- State laws are not prohibitive

Out of Network Impact on the ASC

What happens when you go out of network?

- Volume declines – range of 35% - 75%
- Net Revenue Per Case Increases – 50% of billed charges +
- Payor may threaten your physician users with termination
- Patients out of pocket responsibility increases

Risks & Challenges

What are the risks?

- Out of network payments are random – some are superior and some are poor
- It may be difficult to determine a patient's out of network benefits
- Payors are monitoring out of network spend and looking for ways to reduce or eliminate fruitful out of network benefits
- Payors may send the payment checks to the patient

Current Environment

- Payors are changing benefit plans to meet the demands of employers to reduce cost
- Employers are willing to offer more restrictive plans to their employees in order to save money
- Employers are holding insurance companies accountable for cost effectiveness

Current Environment

- Payors are educating patients regarding alternative PAR sites available for services
- Payors are sending letters to patients & calling them to redirect to PAR providers
- Payors are calling physicians that are directing patients to non par facilities
- Economy is having a negative impact on OON

Out of Network Strategy

Out of Network Analysis… what information do you need?

1) How much volume does the payor represent in network?
2) What volume reduction can you expect moving out of network?
3) Average NR / Case In network?
4) Average NR / Case Out of Network
5) Projected impact on Cost and EBITDA

Out of Network Analysis – General Approach

Financial Assessment – Out of Network:

Out of Network Case Volume	100
Out of Network Receipts / Case	$4,000
Avg. Total Cost / Case	$1,400
Total Payor Receipts Out of Network	$400,000
Total Cost	$140,000
Total Operating Income	$260,000

Out of Network Analysis – General Approach

Financial Assessment – In Network:

In Network Case Volume	300
In Network Receipts / Case	$1,500
Avg. Total Cost / Case	$1,000
Total Payor Receipts In Network	$450,000
Total Cost	$300,000
Total Operating Income	$150,000

Value of going In Network

Revenue Impact	$450,000 - $400,000= $50,000
Net Gain (Loss)	$150,000 - $260,000= ($110,000)

How does an out of network strategy impact your ability to re-negotiate a reasonable contract?

Achieving Favorable Outcomes

1) Out of network can empower you to negotiate
2) It takes time for out of network spend to impact payor which supports contract value
3) Out of network can enable the ASC to restructure a contract to expand services
4) It is important to preserve the payor relationship even when you go out of network
5) Volume that moves to the hospital must be quantified to the payor
5) It can take 12-24 months, to negotiate a new contract

Out of Network Strategy

Understand the risks:

1) Out of network benefits can change at anytime
2) You may realize significant reductions in reimbursement with no warning
3) Declining out of network benefits creates negotiating power for the payor
4) Physician contract provisions may provide obstacles to access the ASC as an out of network provider
5) The ASC must be able to absorb the reductions in volume to avoid negative impact on financial performance
6) There is always the potential for legal ramifications that must be evaluated and understood

Legal Considerations

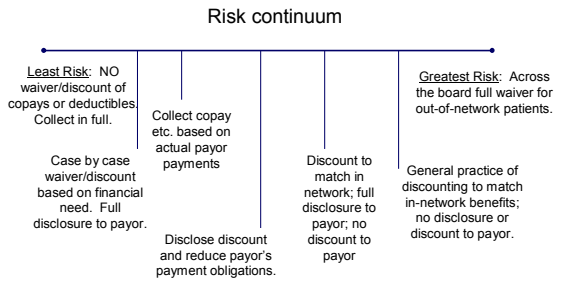
Overview

1. Context: "Out of network" facilities often seek to mitigate financial burden of higher out-of-network cost sharing obligations by discounting or waiving copayments and deductibles for patient who are treated out-of-network.
2. Challenge: Payors may view waivers and discounts as improper inducement or fraudulent billing practice, or giving rise to lower charge.
3. Full Disclosure is Critical: Clear communication and consistent application of waiver/discount policy are keys to reducing potential for payor/provider disputes.

Payors Respond to Reductions and Waivers

1. **Recoupment Action**
2. **Not Pay**
3. **Legal Action**
4. **Pay Patient Only**

Waiver/Discount Approaches



Potential Challenges Based On:

1. Contractual Assignment Concept
2. Alleged kickback
3. Insurance fraud
4. Deceptive/unfair trade practice
5. Unprofessional conduct

Factors Provider Must Consider in Selecting an Approach

1. State Law – Is there State Law?
   - Waiver/discount as insurance fraud or false claim
   - Unprofessional conduct (varies by type of provider)
   - Outright prohibition vs. disclosure requirement
   - Impact on ability to collect from payors
2. Business/financial impact of conservative/no-discount strategy
3. Ability or Inability to obtain contracts

How to Promote Compliance and Reduce Likelihood of Payor Disputes

1. Know your state's law
2. Case by case waiver/discount (for example, based on financial need)
3. Full disclosure to payor
   - Notify when verifying benefits/eligibility
   - Send letter/fax disclosure, stamp claim
   - Describe discount in detail (i.e. indicate that bill is based on usual and customary charge, not discounted amount
4. Base copay on payors payment
5. Offer comparable discount to payor
6. Do not advertise waiver/discount
7. Do not reduce for Medicare/Medicaid patients

Still No Guarantee for Providers

Even with full disclosure and no state law prohibition against waiver/discount, there is always a risk that payors may either refuse to pay claims or seek recoupment after having paid.

Communication is Key

1. Provider should fully inform payor of waiver/discount.
2. Adopt written policy for waiver/discount and ensure that business office staff, referring physicians, and facility scheduler are aware of and abide by the policy.