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Mediating payor-provider disputes: apples and oranges

By Daniel A. Platt

Payor-provider mediations can be complex and challenging due to the intricate nature of the claims involved. These disputes often require detailed claims spreadsheets and involve ERISA regulations and a complex body of case law. The fact-intensive nature of these mediations means that the devil is in the detail of every claim, and the parties and mediator need to effectively prepare for a mediation for it to be successful.

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People necessary for a productive mediation

For a mediation to be productive, both sides need an expert who has an in-depth understanding of claims processing. This person does not necessarily need to be a trial expert or a retained consultant; it can be a paralegal, an in-house claims representative or an attorney well versed in the issues. The key is that this individual must fully understand the party's internal processes, custom and practice in the industry, and be able to delve into the granular details of each claim.

What to provide the mediator

A mediation statement should include who will be in attendance, what has been done with the other side to prepare for the mediation, how the claims are being grouped and whether the other side has agreed to negotiate using the same groupings. Additionally, a spreadsheet showing each claim with as much detail as possible, including billed charges, amount paid, amount allegedly owed and reason for underpayment or nonpayment, should be provided. In certain circumstances, it is helpful to group the claims by body part, type of procedure or geographical region. The status of any settlement negotiations conducted thus far and any relevant law that an experienced mediator would need to understand the claims and defenses should also be included.

What to do with your mediation brief

Sharing mediation briefs is helpful to negotiations, as it allows both sides to understand each other's position. It is important to identify all non-monetary issues that need to be resolved, such as confidentiality or agreements regarding balance billing. Sharing a draft settlement agreement with the terms not yet negotiated as blank can also be beneficial. However, feel free to redact any work product that you think should not be shared, such as negotiating strategy or evidence you are not prepared to share.

The best way to communicate with the mediator

This is a specialized area of practice, so the mediator, lawyers and clients often know each other or at least know of each other. Feel free to share your history with your client and let the mediator know how you think the negotiations should be approached and why. Avoid taking overzealous positions or trying to create fake floors and ceilings, as it undermines credibility and is typically not persuasive. If there is information you do not want to share with the mediator, there is nothing wrong with telling them that very fact.

Apples and oranges

Coordination with the other side on how best to break out claims is essential to ensure both parties are approaching the mediation from the same perspective. It can be difficult to negotiate if one party wants to group claims by reason for denial while the other wants to group them by body part or size of claim. If there is no way to group the claims, that can be agreed upon as well. For instance, it is inefficient if one party wishes to start negotiations on a set of discrete claims that constitute most of the amounts allegedly owed and the other party prefers to negotiate claims denied due to the lack of approval for a specific procedure. Such issues can often be agreed upon prior to mediation.

Parties involved in payor-provider mediations can significantly enhance their ability to settle disputes more efficiently. Meticulous preparation, clear communication and the strategic grouping of claims ensure that both sides approach the mediation with a comprehensive understanding of the issues at hand. This structured approach not only streamlines the negotiation process, but also fosters a collaborative environment, ultimately leading to more successful and timely resolutions. Implementing these strategies will undoubtedly result in a higher rate of settled cases, benefiting all parties involved.

Daniel A. Platt Esq., *is a mediator, arbitrator and neutral evaluator at JAMS. He has acted as a neutral in dozens of matters involving health care payor/provider, commercial, real estate, consumer and ADA disputes. Prior to joining JAMS, he practiced for more than 35 years as a trial attorney, focusing on complex commercial litigation matters.*