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# The Battle Between Health Systems and Health Care Insurance Providers

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As we age, we spend more and more of our money on our health. This is not limited to doctor visits and hospital stays; a major portion goes to ancillary health care services. In 2021, approximately 30% of the $4.3 trillion spent on health care went to ancillary health services (Office of Actuary, National Health Statistics Group, Centers for Medicare and Medicaid Services). Examples include imaging (X-rays, CT scans, MRIs), lab services, physical therapy, and hospice care.

Insurance companies now build their own freestanding facilities to provide these services outside the hospital system. Increasingly, if patients want to use their insurance for ancillary services, the insurance companies are requiring patients to go to their facilities. They are less expensive and, in many cases, easier to access than hospital-provided facilities. As you would imagine, the hospitals insist the services be provided within their existing system to ensure the quality of care. I have seen this battle end up in mediation many times, and in the end, I am left wondering how the patient can be protected in this situation.

**Let's use the example of imaging to help us consider each side's perspective.**

The hospital feels it has state-of-the-art equipment and a team of radiologists, combined with oncologists and other specialists, to review a scan. This team approach allows for the most accurate diagnosis by highly trained professionals. The costs may be higher in the hospital setting, but the quality of care is superior.

The insurance company is looking at efficiencies. A scan

done off-site at its facility can be reviewed by its radiologist and then transmitted digitally and read instantly by hospital personnel if a second opinion is needed, at a cost saving to the patient. Insurance companies have argued that they are the only ones taking active steps to minimize the rising costs of health care.

Each side raises valuable points, but unfortunately, the patient is caught in the middle. If these types of disputes end up in litigation, the patients will be the ones to suffer, even long after they leave the hospital. A negotiated settlement

allows everyone involved to move forward.

As a side note, this issue also confronts physician practice groups in a different way. In a May 10, 2019, article by Jeffrey Bendix in the journal *Medical Economics*, he suggests a new cost-benefit analysis when considering ancillary services. He points out we are moving away from the traditional fee-for-service payment model to a value-based model. In a fee-for-service model, it is straightforward in terms of the volume of patients who need the service, what it costs to provide it, and how much you get reimbursed for it. In a value-based system, with its focus on the cost of care and outcomes, the financial return associated with adding service is more difficult to calculate. He cites the example of whether to provide pulmonary function testing for patients with COPD. Not only does the practice have to decide if it can provide the service for less than a pulmonologist, but it also has to weigh if in-house testing will reduce the number of patients who go to the ER, which would drive up the overall cost of caring for that patient.

Mediation has been a successful mechanism to resolve these disputes because the welfare of the patient is paramount and both sides understand the stakes are enormous. I've had the good fortune to work with excellent lawyers on both sides. Mutual respect was shown throughout the process. My background in health care law is useful as parties and I work through issues to find common ground. Although Zoom mediation can be effective, in some instances, it is best to meet face-to-face.

Because several hundred thousand lives are covered by these policies, both hospital systems and insurers are putting their best foot forward to obtain fair resolutions.

The end result reminded me of a quote from Abraham Lincoln: "The best way to predict the future is to create it."

***David M. Zacks, Esq.**, is a mediator, arbitrator, and special master at JAMS. He focuses on healthcare industry disputes, catastrophic personal injury matters, and business/commercial disputes. David has garnered extensive experience in these areas throughout his distinguished legal career as a trial lawyer and neutral spanning 50 years. He can be reached at dzacks@jamsadr.com.*