Courts Wrestle With Firms Seeking to Profile Doctors

BY BRUCE JANCIN

SAN FRANCISCO — You won't believe who's seeking access to your Medicare claims data—and what they want to do with it.

A little-known consumers group aiming to force the Health and Human Services department to provide Medicare billing data with physician identifiers recently was rebuffed by a narrow margin in federal appeals court. Meanwhile, another federal court has ruled in favor of a similar Freedom of Information Act request by another organization, setting the stage for a likely legal showdown with major implications for physicians.

"I think given the disagreement in these two cases, this is likely to be a higher court issue. We might actually see this going to the Supreme Court," Dr. Jack S. Resneck Jr. predicted at the annual meeting of the American Academy of Dermatology.

A bit of background: Consumers' Checkbook, a small nonprofit group, sued HHS seeking data on Medicare payments to physicians for the express purpose of reporting on the volume and appropriateness of procedures physicians were performing as a guide to quality of care.

In 2007, the group prevailed in U.S. District Court. The American Medical Association then joined HHS in appealing the verdict, with other medical organizations filing friend-of-the-court briefs on their behalf.

In January, the U.S. Court of Appeals for the District of Columbia reversed the lower court decision on a 2-1 vote, awarding victory to HHS and the AMA.

"This was a big surprise, actually, because arguing for physician privacy interests was seen as a pretty big uphill battle," noted Dr. Resneck of the University of California, San Francisco.

Consumers' Checkbook is expected to ask for reconsideration of the decision by the full appeals court.

Meanwhile, a similar Freedom of Information Act–based lawsuit filed by Jennifer Alley, owner of a small company called Real Time Medical Data, had a very different outcome. A U.S. District Court in Alabama ruled in her favor and ordered HHS to provide Medicare claims data with physician identifiers for five southern states so Real Time Medical Data could sell it to hospitals, insurance companies, and pharmaceutical companies. The HHS and AMA have appealed. Ms. Alley has asked the 11th U.S. Circuit Court of Appeals in Atlanta to hold HHS in contempt for not releasing the data.

Using Medicare billing data to characterize quality of care is likely to create a misleading picture, Dr. Resneck noted.

"Volume is just one tiny piece of measuring physician quality. This is a little scary. These folks [at Consumers' Checkbook] have no experience with evidence-based quality measures, no experience with risk adjustment, and have no access through these claims data to outcome measures," he said. ■

On-Demand Scheduling May Hinder Chronic Illness Care

BY DIANA MAHONEY

The outcomes of some patients with type 2 diabetes appeared to be poorer when they were enrolled in clinics with open access scheduling, in which patients are seen for appointments within 24 hours.

The finding is surprising because open access scheduling has been hailed as a strategy for increasing practice efficiency and improving access to care. The premise is to eliminate appointment backlogs, and patient no-shows.

In a retrospective, cohort study, researchers at the Indiana University School of Medicine compared the impact of open access and traditional scheduling on the care processes and outcomes of 4,060 adult patients with type 2 diabetes. All study participants came from a large health plan and received care between July 1, 2004, and June 30, 2006, at one of six open access clinics or at one of six traditional access clinics.

In adjusted multivariate analyses comparing open access to traditional scheduling, open access scheduling "significantly affected diabetes-related clinical outcomes in the short term," Dr. Usha Subramanian and colleagues reported. In particular, the quality of care was worse for African American patients, they noted (J. Gen. Intern. Med. 2009 Mar[24]:327-33).

In the open access group, the odds ratio for hemoglobin A_{1c} testing among African American patients was 0.47 and the odds ratio for microalbumin testing was 0.37, the authors wrote. Additionally, patients in the open access clinics had significantly higher systolic blood pressure at 1 year as did patients in the conventional scheduling clinics. There were no between-group differences in health care utilization outcomes.

The study was conducted among patients in a single health plan located in one city and most patients were of low socioeconomic status, so "results may not generalize to all other settings or patients groups," they stressed.

Rigorously designed studies are needed to examine open access scheduling more critically, the authors wrote. Such studies should be conducted in multiple health care settings and should incorporate measures for patient satisfaction, continuity of care, and access to care. ■

POLICY & PRACTICE

Administration Posts Filling Up

The Obama administration has named officials to several top health care–related positions that do not require Senate confirmation, including the administrator of the Health Resources and Services Administration and the new National Coordinator for Health Information Technology. Rural health expert Mary Wakefield, Ph.D., R.N., was selected to head the HRSA, joining the agency from the University of North Dakota. Internist David Blumenthal, former director of the Institute for Health Policy at Massachusetts General Hospital, will take the lead on creating a nationwide HIT infrastructure. And three new members will join the U.S. Preventive Services Task Force: Susan Curry, Ph.D., of Iowa City, an expert on tobacco use; Dr. Joy Melnikow of Sacramento, a family physician; and Dr. Wanda Nicholson of Baltimore, a board-certified obstetrician-gynecologist and a perinatal epidemiologist.

Virtual Colonoscopy Supported

More than 40 members of Congress have signed a letter urging the Centers for Medicare and Medicaid Services to cover computed tomography colonography (CTC), or virtual colonoscopy. The letter responded to a proposed decision by the CMS not to cover the noninvasive procedure because of what the agency considers to be insufficient evidence that it improves the health of Medicare patients. "Medicare coverage of CTC could prevent unnecessary deaths," the lawmakers said in the letter. "Many Americans forgo the colorectal screening process … so an alternative such as CTC should be covered by Medicare." The lawmakers noted that Walter Reed Army Medical Center has called its CTC program a success and is working with the Department of Veterans Affairs to deploy CTC screening throughout the VA Health System.

NQF Adds Safe Practices

The National Quality Forum has recommended seven new practices that it said have been proved effective in reducing adverse events; the practices include efforts to prevent falls, eradicate multidrug-resistant organisms, and improve glycemic control in diabetic patients. The membership group also recommended improvements in care for clinical providers, staff, and administrators who are harmed in the course of their work, interventions to prevent catheter-associated urinary tract infections, appropriate hospital policies on organ donation, and safe practices for children receiving CT scans. These seven new recommendations were included among 34 safe practices promoted in the National Quality Forum's 2009 Safe Practices for Better Healthcare report and year-long Webinar series. Forum members include the American College of Physicians and the American Academy of Family Physicians.

Americans Struggle on Costs

About one in five Americans reported having difficulty paying for necessary health care in December 2008, 3 percentage points higher than in January 2008, according to a Gallup poll commissioned by the disease-management company Healthways. More than half of the uninsured struggled to pay their medical bills, as did 30% of all Hispanic and black Americans. The percentage of people receiving employer-based insurance is only 58%, the poll found. The score on the poll's overall "well-being" index, which combines physical and emotional health, healthy behavior, work environment, and access to care, fell significantly over the past year.

Loneliness, Poor Health Linked

Not having many close friends may contribute to poorer health for many older adults, and feeling lonely is associated with increased health risks, according to a study from the University of Chicago. Researchers measured the degree to which older adults were socially connected and active. They also assessed whether the elders felt lonely and expected friends and family to help them in times of need. The study found that the most socially connected older adults were three times as likely to report being in very good or excellent health, compared with those who were least connected, regardless of whether they felt isolated. But older adults who felt least isolated were five times as likely to report being in very good or excellent health, compared with those who felt most isolated, regardless of their actual level of social connectedness. The study was published in the Journal of Health and Social Behavior.

Upcoding Alleged in MA Plans

The problem of overpayments to Medicare Advantage plans will not be solved until Congress addresses the plans' upcoding practices, according to a new report from the Center on Budget and Policy Priorities, a progressive think tank. "Upcoding helps private plans financially by inflating the payments that Medicare makes to them," according to the report. An analysis of 2007 data from the CMS showed that the severity of the diagnosis codes is rising faster among beneficiaries in Medicare Advantage plans than among those in traditional Medicare. Until that problem is addressed, "private plans will continue to receive overpayments … because the private plan beneficiaries' actual health status will be better than their reported health status," the authors wrote.

—Jane M. Anderson