

GREENBERG TRAURIG, LLP

Understanding the New AMA Principles and Guidelines for Pay-for-Performance Programs- A Legal Interpretation

National Pay for Performance Summit



Michael R. Costa, Esq., M.P.H.
Greenberg Traurig, LLP

One International Place, 3rd Floor • Boston, MA 02110

617.310.6065 • 617.310.6001 (fax)

E-mail: costam@gtlaw.com

<http://www.gtlaw.com>

GREENBERG

ATTORNEYS AT LAW

TRAURIG^{LLP}

Agenda

- Overview of PPF programs;
- Factors Driving PPF programs;
- Private, State and Federal initiatives;
- Problems associated with PPF;
- MedPAC Report
- AMA Principles and Guidelines



Goals of A Pay-for-Performance Program

- PFP goals are to:
- reward quality by creating financial incentives large enough to motivate structural change;
- effectuate health care system changes needed to reduce error and improve quality, to reduce the cost and improve the efficiency of care;
- encourage physicians to broaden their delivery of patient care beyond the office visit (population management); and,
- put greater direct responsibility on physician practices to “get it right the first time.



Goals of A Pay-for-Performance Program

The expectation of PFP proponents is clear: as quality increases, the nation's health will improve and health care costs will decrease.



What is Pay for Performance?

- incentive programs that provide monetary bonuses to participating entities that make progress in achieving or attaining specific quality and/or efficiency benchmarks or standards that are established by the program.
- apply to health plans, hospitals, or other entities, but increasingly physicians and physician groups are being targeted.



What is Pay for Performance?

- Most physician PFP programs provide financial bonuses to physicians or physician organizations that meet the programs' performance criteria.
- size of incentive payments typically is modest – usually about 1 to 5% of a physician's total revenue



What is Pay for Performance?

- PFP programs collect vast amounts of data about specific physician interactions with patients and use that data to try to measure physician quality and cost of patient care with little standardization from one program to the next.



Factors Pushing PPF Programs

- **Rising Health Care Costs**
- National health expenditures increased to \$1.6 trillion in 2002, a 9.3% increase from 2001, and a substantial increase over the 5.5% annual increase that occurred during the mid to late 1990s.
- The health care share of the (GDP) increased to 14.1% in 2001 and 14.9% in 2002.
- Number of uninsured rose to 45 million in 2003, or 15.6% of the non-elderly population.



Factors Pushing PPF Programs

- Improved Patient Quality
 - *To Err is Human* report;
 - The National Patient Safety Foundation
 - Physician Consortium for Performance Improvement



Private Initiatives

- Health Plan Involvement
- Employer Involvement
- Employer Scorecards
- Physician Organization Incentive Program



State Initiatives

- Pay for Performance incentive proposals have yet to take hold in the state legislatures.
- States such as Connecticut, Florida, Kentucky, Michigan, Minnesota, North Carolina, Oklahoma, Tennessee, Texas, and Wisconsin, have enacted or have pending legislation to create programs to study quality or patient safety measures or to promote best practice measures and encourage evidence-based medicine within the states' Medicaid programs.



Federal Initiatives

- in the next five to ten years, pay for performance-based compensation could account for 20% to 30% of what the Medicare program pays providers.
- Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) demonstration projects



Federal Initiatives

- April 2005, CMS launched a demonstration project to test pay for performance in Medicare's fee-for-service payment system for physicians.
- Ten multi-specialty physician groups in communities across the nation are participating.
- Groups continue to be paid on a fee-for-service basis, but will be able to earn performance-based payments for implementing care management strategies that anticipate patients' needs, prevent chronic disease complications, avoid hospitalizations, and improve the quality of care,



Problems with PPF

- Physicians facing over 30% reductions in Medicare reimbursement from 2006 through 2013, compounded by exorbitant liability premium increases, many of these specialty physicians are reconsidering their Medicare participation status
- no way to determine whether physicians are meeting or exceeding performance standards without massive data collection – lack of technology



Problems with PPF

- performance measures should be developed by physicians, not by government or third-party payers that may be more interested in cost-containment than quality
- Physicians have an innate antipathy to evaluating and being evaluated



2005 MedPAC Report

- On July 27, 2005, MedPAC issued a report to Congress recommending linking payment to quality through pay-for-performance programs in Medicare.
- PPF addresses inequity in system which pays good and bad providers the same.
- Congress not obligated to accept MedPAC decision.



GREENBERG

ATTORNEYS AT LAW

TRAURIG LLP

AMA Principles for Pay-for-Performance Programs

- Physician pay-for-performance (PFP) programs are designed primarily to improve the effectiveness and safety of patient care
- May serve as a positive force in our healthcare system.
- Fair and ethical PFP programs are patient-centered and link evidence-based performance measures to financial incentives.



AMA Principles for Pay-for-Performance Programs

- PFP programs are in alignment with the following five AMA principles:
 - **Ensure quality of care**
 - **Foster the patient/physician relationship**
 - **Offer voluntary physician participation**
 - **Use accurate data and fair reporting**
 - **Provide fair and equitable program incentives**



AMA Principles for Pay-for-Performance Programs

- **Ensure quality of care** – Fair and ethical PFP programs are committed to improved patient care as their most important mission.
- Evidence-based quality of care measures, created by physicians across appropriate specialties, are the measures used in the programs.
- Variations in an individual patient care regimen are permitted based on a physician's sound clinical judgment and should not adversely affect PFP program rewards.



AMA Principles for Pay-for-Performance Programs

- **Foster the patient/physician relationship** – Fair and ethical PFP programs support the patient/physician relationship and overcome obstacles to physicians treating patients, regardless of patients' health conditions, ethnicity, economic circumstances, demographics, or treatment compliance patterns.



AMA Principles for Pay-for-Performance Programs

- **Offer voluntary physician participation** – Fair and ethical PFP programs offer voluntary physician participation, and do not undermine the economic viability of non-participating physician practices.
- These programs support participation by
- physicians in all practice settings by minimizing potential financial and technological barriers.



AMA Principles for Pay-for-Performance Programs

- **Use accurate data and fair reporting** – Fair and ethical PFP programs use accurate data and scientifically valid analytical methods.
- Physicians are allowed to review, comment and appeal results prior to the use of the results for programmatic reasons and any type of reporting.



AMA Principles for Pay-for-Performance Programs

- **Provide fair and equitable program incentives** – Fair and ethical PFP programs
- provide new funds for positive incentives to physicians for their participation, progressive quality improvement, or attainment of goals within the program.
- The eligibility criteria for the incentives are fully explained to participating physicians.
- These programs support the goal of quality improvement across all participating physicians.



Conclusion

- Pay for Performance programs offer many opportunities for enhanced quality care.
- Linking payments to performance is dangerous as no agreed upon standards in place and reporting/analysis mechanisms deficient.
- AMA Guidelines a good starting point in standardizing such PPF programs.



Contact

Michael R. Costa, Esq., M.P.H.
Greenberg Traurig, LLP
One International Place- 20th Floor
Boston, MA 02110
(617) 310-6065
(617) 310-6001 (fax)
E-mail: costam@gtlaw.com

