



The Peril of Contracts with IPAs and Medical Groups



By Michael G. Polis, Esq., CPA

A recent appellate court decision holds that HMOs are not liable if an IPA or medical group intermediary fails to reimburse a physician under contract for services rendered. That means that contracts have to be closely scrutinized, now more than ever.

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Suppose a physician contracts with an IPA or medical group. Suppose he or she provides services for which an HMO pays the "intermediary" IPA or group. Suppose the intermediary has financial problems and cannot not pay the physician. And suppose the physician then tries to collect directly from the HMO.

Tough luck.

An appellate court has ruled that physicians who contract with an IPA or a medical group do so at their own peril if the "intermediary" cannot pay for care provided.

The physician has no redress against the HMO for fees as a result of the IPAs or medical group's inability to pay. The only recourse is to seek payment from the IPA or medical group for its failure to pay as prescribed by contract.

The decision has been appealed to the California Supreme Court, which has not yet decided whether to take it under consideration.

But the implications for practicing physicians are clear — and significant: they must closely examine any contracts before entering into them.

The Court decision.

In December of 2001, the California Court of Appeals held in *California Medical Association v. Aetna U.S. Healthcare of California, Inc.* that a physician who contracts with an IPA or medical group does so at his or her own peril should the contracting entity fail to reimburse the physician for services rendered from fees it collects from HMOs. The physician is not entitled to collect directly from the HMO if the medical group or IPA defaults.

The California Medical Association had argued that section 1371 of the Knox-Keene Health Care Service Plan Act of 1975, as amended, requires HMOs to reimburse physicians for providing medically necessary services to HMO patients when a contracting IPA or medical group becomes insolvent.

But the Court held that section 1371 does not impose such a duty on HMOs. It stated that "CMA has not identified anything in the legislative history indicating that section 1371 was intended to impose an obligation on health plans to pay treating physicians where the

plans had no contractual obligations to do so."

The Warning Signs.

The *Aetna* decision, now more than ever, requires physicians to carefully examine contracts they enter into with medical groups or IPAs. Prior to contracting with an IPA or a medical group, the physician should consider the following eight items:

1. Determine whether there has been excessive turnover in the executive staff of the IPA or medical group. Excessive turnover may indicate internal troubles and that management is either unwilling to weather the storm or believes that the problems are insurmountable.
2. Obtain referrals and contact other physicians who contract with the IPA or medical group. Ask how quickly claims are paid, and about the character and nature of claim rejections — are "clean" claims being rejected for inappropriate reasons?
3. Ask for a current balance sheet and an income statement. IPAs and/or medical groups in financial trouble are often unable to provide current information.
4. If available, review the current balance sheet and income statement for obvious problems. For example, does the bank account show a negative balance, do accounts receivable indicate a large risk-sharing balance, is there a large accounts payable relative to the size of the entity, or perhaps a large claims payable? If so, you should discuss with management the IPA's or medical group's plan to resolve the problems. In addition, look for items that appear to be missing. For example, insurance, payroll and payroll tax expenses should be disclosed on the income statement. Often when an IPA or medical group is having financial problems, the non-disclosed items can be the most troublesome and create the biggest problems.
5. Does the income statement show a large net loss? This seems obvious, but it is important to check whether management is competent by determining whether it can manage the business affairs of the IPA or medical group as summarized by net income or net losses.
6. Ask the IPAs or medical group's management to provide a list of HMOs, insurance companies, or other third-party payor arrangements it contracts with and the contract expiration date. If the list fails to include larger HMOs or insurers, inquire why the IPA or medical group does not contract with them. For obvious reasons, larger payors often do not contract with troubled IPAs or medical groups.
7. Confirm with the IPAs or medical group's management that income tax returns have been filed with the Internal Revenue Service and Franchise Tax Board. Troubled IPAs or medical groups typically wait until tax authorities actually notify them that they must file a return. The IPAs or medical group's management will be involved in trying to pay current obligations at the expense of other management tasks, such as filing payroll and income tax returns.
8. Confirm with the IPAs or medical group's management that workers' compensation insurance and other business insurance is current. Contracting with entities that are underinsured is very risky — they may be one claim away from shutting down operations.

Several large medical groups and IPAs in the last few years have had significant financial problems. The *Aetna* case provides no relief for physicians who care for HMO patients through contracts with an IPA or a medical group. Physicians have to be very careful about the entities they contract with. If an IPA or medical group cannot pay, the physician has no right to seek payment from the HMO .

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