Dynamic Chiropractic

Provider Liability for Managing Care

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The theme of managed care is to identify the needs of patients by assessing the opportunities to coordinate care, develop treatment plans that improve quality by selecting alternatives best for the patient, and managing total care to ensure optimum outcomes. Managed care is touted as an integral part of the quality management system, not another form of utilization review. Nevertheless, potential legal liability for managing care is growing. Clearly, appropriate cost reduction is a major goal of managed treatment plans. These plans are supposed to "improve quality" over fee for service plans by "selecting" treatment which is "best for the patient." The very heart of managed care with its disproportionate concern with cost, as opposed to access, plants the seeds for legal liabilities.

Points of Risk

1. Failure to obtain all applicable medical, hospital and other clinical records upon which managed care determination are made.

2. Failure to have patients evaluated by clinicians with the appropriate type of training, experience, and credentials.

3. Failure to confer directly with the gatekeepers with respect to their determinations for the patient's care and vigorously defending patient needs.

4. Failure to be the patient's advocate versus the managed care authority.

5. Allowing the gatekeeper's judgment to prevail rather than the treating doctor's.

6. Accepting the gatekeeper's threats to dismiss the treating doctor because the doctor disagrees with the management authority.

7. Allowing harassment of the clinicians by imposing unreasonable deadlines or treatment plans.

8. Allowing contractual obligations to supersede clinical judgment which are not in the patient's best interest.

9. Allowing gatekeepers to steer patients to others against the patient's wishes.

Risk Management Strategies

A. Investigate and review all policies, contracts, consent forms, marketing materials, and utilization manuals. Pay attention to the small print. Don't get stampeded in agreeing to a managed care organization's (MCO) protocols because you are afraid to be left out. Remember your professional obligations.

B. Don't allow the gatekeeper or arbitrary treatment protocols to govern the level of care the patient receives. The responsiblity for appropriate care is the treating doctor's.

C. Don't allow claims adjusters, gatekeepers, or phony treatment plans to make patient determinations.

D. Clearly determine the appeals process if your clinical decisions are rejected. Does the plan allow for impartial evaluations by doctors not employed by the managed care company? Otherwise, the fox is guarding the hen house.

E. Determine the timetable for appeals and how reasonable they are with the real world.

F. Review the basis for the treatment determinations by which the MCO obliges you to practice. How valid are they? Do they represent patient care or the bottom line?

G. Support the public disclosure of the MCO's profitability statutes. The press suggests 27-34 percent annual profit to these companies, while they reduce care and the doctors' income.

H. Ask for legal endorsement which states that the treatment of patients is the sole responsiblity of the clinician and not anyone else.

I. Study the PR materials used for marketing and make sure they are not misleading when it comes to chiropractic care.

J. Make sure what exactly your malpractice covers and does not in the MCO setting.

K. Don't sign with an MCO without a lawyer reviewing the proposal.

Summary

The treating doctor is ultimately responsible for patient care. Don't let the MCO interfere with your patient care and place you in jeopardy. Ask the MCO what legal protection you will receive from them and then check it out with your malpractice company. "Trust but verify" was former President Reagan's perspective when it came to the USSR. Not a bad idea for the 21st century chiropractic physician to remember before signing any MCO contracts.

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