

Part B Insider (Multispecialty) Coding Alert

ANTITRUST: Doctors Should Join Together To Fix Patients, Not Prices

Your independent practice association should be truly integrated

When physician practices join together to create a more efficient system, a beautiful synergy may result. But don't join forces just to wring more money out of payers.

Two Cincinnati orthopedic groups, **Wellington Orthopedics & Sports Medicine** and **Beacon Orthopedics & Sports Medicine**, joined forces to create an independent practice association (IPA) called **New Millennium Orthopedics**.

The new entity, NMO, wrote to managed care plans starting in August 2002, to negotiate pay rates on behalf of the two practices. NMO also suggested a bonus arrangement where the orthopedists would receive more money if they shifted more procedures to ambulatory surgery centers (ASCs). The doctors also refused to contract with one managed care plan unless it dealt with NMO.

The **Federal Trade Commission** went after the orthopedists, claiming that the ASC-related bonuses were designed to reward the doctors for their already high rate of ASC usage. NMO's tactics were only designed to increase payments, not to improve the efficiency of care, the FTC contended.

In early May, the orthopedists signed a consent order with the FTC in which they agreed to dissolve NMO. They also promised never to enter into similar joint agreements in the future, or to refuse to deal with payers. And they agreed to dissolve any of the managed care contracts they signed during "the collusive period" at any payer's request.

This case is in line with other FTC decisions in cases where "otherwise independent physician groups" came together to set the prices at which they'd sell their services, says attorney **Andrew Gordon** with **Coppersmith Gordon Schermer Owens & Nelson** in Phoenix, AZ. "It's not unusual for doctors to form groups" to become more efficient, he notes. But the orthopedic groups that formed NMO were "otherwise unrelated."

If you're forming an independent practice association, "you may have to join your groups so closely as to almost merge - where you are no longer separate groups, you are one," says attorney **James Taylor** with **Gallagher & Kennedy** in Phoenix, AZ. The other alternative is to use the controversial "messenger model," in which an entity carries each physician's separate proposal to the payer and then carries the payer's proposal back to each physician.

The "messenger" go-between can only carry proposals back and forth, but is forbidden to negotiate on behalf of the parties or carry a joint proposal from all the physicians, making it an awkward solution.

IPAs should be safe from anti-trust scrutiny if they take on financial risk, says attorney **David Henninger** with **Hooper Lundy & Bookman** in Los Angeles. You can fit into a "safety zone" if the IPA takes capitated payments - on which it could lose money if care is more expensive than expected - and also represents no more than 20 percent of the local physicians. The IPA can represent up to 30 percent of local physicians if it contracts non-exclusively.

With Medicare Advantage plans set to bring more managed care contracting to Medicare soon, observers expect physicians to try harder to find ways to negotiate collectively.

"It's an ongoing struggle," says Gordon. "What it will probably lead to is larger physician groups because that's the only way they're going to be able to accomplish this."