

12TH ANNUAL NJ HEALTHCARE MARKET REVIEW

September 28-29, 2023

Borgata Hotel Casino & Spa Atlantic City, NJ

Practice Management Panel of Experts: Hot Topics Relevant to Your Practice

Moderator: Keith J. Roberts, Esq.
Member, Brach Eichler LLC

Mitchell Brie, CHC
Principal
Empower HCP

Riza I. Dagli, Esq.
Member
Brach Eichler LLC

Robert S. Goodman
Vice President
MidCap Advisors, LLC

Ashlie Malone, MBA, JD, COE
Founder
Practice Management & Legal
Consulting

PANELISTS



Mitchell Brie, CHC
Principal, Empower HCP

Mitchell has been an industry expert and trusted advisor in the Healthcare industry for the last two decades relating to compliance, payment care and revenue models, as well as the optimization of practice software and due diligence in the healthcare acquisition space. Mitchell is proficient on over a dozen EHR/PM systems. He has worked with thousands of providers, helping them attest and avoid penalties for multiple quality programs. Mitch also works to help practices transition from fee for service to value based reimbursements, as well as work with independent physician practices to advise them on how to stay profitable and assist in the due diligence for M&A between private equity and the health system or practice. Mitchell is an OCO (outsourced compliance officer) and is a certified compliance officer)

Mitchell spent three years at WebMD, and then eight years at Greenway Medical Technologies, assisting more than 15,000 providers. He started his own firm in 2013 for the purpose of bringing practices and health systems together. He also specializes in CJR, Population Health, Chronic Care, and End of Life issues. He has had tremendous success connecting companies in partnerships so that they can thrive in the changing landscape of healthcare. He has been on numerous panels, and has been a speaker on many occasions to discuss his views on the future of healthcare. Mitchell is a speaker across the country specializing in many specialties including Orthopaedics, Pain, and Radiology, and also speaks at many software companies annual meetings.

PANELISTS



Riza I. Dagli, Esq.
Member, Brach Eichler LLC

Riza Dagli leads the firm's Criminal Defense and Government Investigations Group. He focuses his practice on high-stakes criminal and commercial litigation, and represents businesses and individuals in complex and international matters and governmental investigations. He is regularly retained by corporations, health care professionals, health care organizations, financial businesses, lawyers, accountants, executives, and companies of varying sizes, in all stages of federal and state white-collar criminal and civil litigation, from initial inquiries to trial and appeals.

He is a former prosecutor, and led both New Jersey's Office of the Insurance Fraud Prosecutor and the New Jersey's Medicaid Fraud Control Unit, as well as New Jersey's Division of Criminal Justice Specialized Crimes and Organized Crime Bureaus. His extensive experience includes cases involving fraud, racketeering, money-laundering, tax evasion, Medicare, Medicaid, and the False Claims Act.

PANELISTS



Robert S. Goodman

Vice President, Healthcare, MidCap Advisors, LLC

Robert Goodman is Vice President for Healthcare at Midcap Advisors, LLC and he works with physician practices as well as other outpatient healthcare providers in support of their future plans. These plans can range from the sale to a consolidation effort to facilitating new partnerships and business combinations. The support he provides is strategic, financial and practical, and tends to involve advisory services, positioning options, growth strategies, equity raises, as well as mergers and acquisitions with typically a competitive process utilized for finding the right client-focused solution.

Bob has been a hospital administrator, including as CEO where he led the hospital's turnaround; worked in the investment banking field in a turnaround capacity; was a finance executive at an equipment leasing company financing outpatient start-ups, healthcare practices, hospitals and other healthcare businesses; and as a healthcare strategic business consultant and advisor he has written business plans, conducted turnarounds, performed due diligence services for investors and lenders, fostered the sale of several outpatient centers, and obtained debt financing and restructured debt for more than 20 years, during which time he has had ownership and operating interests, as well as board seats, in several healthcare companies.

PANELISTS



Ashlie Malone, MBA, JD, COE *Founder, Practice Management & Legal Consulting*

Ashlie LB Malone, MBA, JD, COE is a seasoned business professional and entrepreneur. Most recently Ashlie served as the Practice Administrator of a busy ophthalmic surgical group in South Carolina which she launched with the owners in 2008 and developed into a busy surgical group serving patients across the Charleston region. Ashlie is a healthcare advocate and is actively involved in the American Society for Ophthalmic Administrators (ASOA) and the South Carolina Bar Association. Ashlie currently serves as the President of the National Board for the Certification of Ophthalmic Executives (NBCOE), is a frequent contributor to Administrative EyeCare magazine, and works closely with practices as a consultant and mentor with a special focus on practice management, workflow, and recovering profitability. Ashlie's entrepreneurial spirit has supported the launch and development of several personal ventures, including the Practice Management Insights podcast and Phone COA, LLC, which provides prescreening and preloading services to busy ophthalmic practices in order to decompress staffing shortages and expedite patient work up times. On a personal level, Ashlie enjoys spending time with her husband and three boys and exploring new adventures around the Charleston area.

MODERATOR



Keith J. Roberts, Esq.
Member, Brach Eichler LLC

Keith Roberts Esq. is Chair of the Litigation practice. A leading practitioner in the healthcare and regulatory fields, Mr. Roberts represents health industry clients on various litigation matters, including regulatory matters (including the structuring of transactions to comply with applicable exceptions/safe harbor of state and Federal Fraud and Abuse Laws), negotiations with third party payors, licensure matters (e.g., Board of Medical Examiners, Board of Pharmacy and other professional board actions), third-party payor (including Medicare/Medicaid) and investigations, litigation, audits, disputes recoupments, and appeals, reimbursement matters, and other commercial litigation, healthcare fraud litigation (e.g., Insurance Fraud Prevention Act).

Keith has extensive litigation experience representing clients in some of the largest, most complex, and high exposure cases with an in-depth understanding of the law and a command of the facts to strategically achieve his clients' litigation objectives. As a member of the healthcare team at Brach Eichler, Keith is often called upon to represent hospital systems, surgical centers, medical practices, and a wide array of healthcare professionals in complex litigation matters.

He is certified by the [New Jersey Supreme Court as a Civil Trial Lawyer](#). This certification is bestowed by the Court upon select attorneys who demonstrate sufficient levels of experience, education, knowledge and skill in a specific area of law or practice and have been recognized by their peers as having sufficient skills and reputation in the designated area of law, among other requirements. He is often consulted by healthcare professionals for his extensive insight concerning regulatory issues, practice structures, insurance audits, and compliance.

REDUCING PRACTICE RISK WITH PROPER FINANCIAL CONTROLS

A medical-themed background featuring a silver stethoscope, a clipboard with a pen, and an ECG (heart rate) monitor. The ECG shows several leads including aVR, aVL, aVF, V1, V2, V3, V4, V5, and V6. The text 'Filter 100 Hz H 50' and 'mm/s' is visible on the ECG paper. The main text is overlaid in large, bold, black letters.

REDUCING PRACTICE RISK WITH PROPER FINANCIAL CONTROLS

CARDIOVASCULAR

- | | YES | NO | Notes |
|---|-----|----|-------|
| (a) Is there any history of cardiac infarction (coronary thrombosis), any persisting anginal pain, or any current need of treatment for anginal pain? | | | |
| (b) Is there any other evidence, including ECG, of ischaemic heart disease? | | | |
| (c) Is there any history of arrhythmia (excluding extrasystoles which disappear on exertion)? | | | |
| (d) Is the blood pressure $\geq 160/95$ mm/mV or over? | | | |
| (e) Is hypertension treated? | | | |
| (f) How long has hypertension been present? | | | |
| (g) How long has hypertension been treated? | | | |
| (h) How long has hypertension been present? | | | |
| (i) How long has hypertension been treated? | | | |

slido



What percentage of medical practices experience embezzlement?

ⓘ Start presenting to display the poll results on this slide.

slido



**What is the average overhead %
for a medical practice?**

i Start presenting to display the poll results on this slide.

slido



What is the quickest way to increase profit margin?

ⓘ Start presenting to display the poll results on this slide.

Financial Controls

Financial Controls are the procedures, policies, and means by which an organization monitors and controls the direction, allocation and usage of its financial resources.

“Financial Controls are at the very core of resource management and operational efficiency in any organization.”

Corporate Financial Institute

Why Do We Care?

Proper Financial Controls Directly Influence:

1. Cash Flow Maintenance
2. Resource Management
3. Operational Efficiency
4. Profitability
5. Fraud Prevention

Corporate Financial Institute

Embezzlement

Healthcare has the 4th highest incidence of fraud across all industries with a median annual loss of \$450,000

66% of medical practice embezzlers are the most trusted employee/management level employee*

“Many physicians don’t provide adequate guidelines for employees who handle financial matters, or they don’t enforce existing policies”.

*2016 Hiscox Embezzlement Study
Association of Certified Fraud Examiners’ 2018 “Report to the Nations” (tma.tips/FraudStudy)

Financial Leaks

- Time clock theft
- Unauthorized or undocumented payroll advances or 401k "Loans"
- Unapproved or unbalanced raises or PTO given to employees
- Deleting PM charges or payments
- Processing CC refunds or payments on to personal credit cards (i.e. medical records payments)
- Setting up fake vendor accounts in Quickbooks and paying invoices to account
- Use of company credit card for personal purchases
- Patient payment "floating"

Separation of Duties

If you can implement one thing today, it is to separate the practice's financial duties and assign pieces to different employees that work together for the greater good.

Never have the same person collect the cash, reconcile the cash, record the cash and deposit the cash.

“You Can’t Measure What You Don’t Monitor”

Rule #1: Know Your Overhead (even if you don’t like the answer!)

- Watch for Cost Creep in invoices (i.e. fuel surcharges, shipping costs, price increases)
- Evaluate repeat/auto charges to cc or bank account: Do you still use that service?
- Negotiate prices/ get at least 2-3 bids for each service as a policy
- Restrict access: credit card, checks, bank accounts, 401k portal

It's Okay to Phone a Friend

Annual audits are your friend! Routinely seek the guidance of:

- Accountants
- Practice Management Consultants
- Benchmark analysis
- Membership to industry societies and resources

PRACTICE AUDITS BY PAYORS

CARDIOVASCULAR

- (a) Is there any history of cardiac infarction (coronary thrombosis), any persisting anginal pain, or any current need of treatment for anginal pain?
- (b) Is there any other evidence, including ECG, of ischaemic heart disease?
- (c) Is there any history of arrhythmia (excluding extrasystoles which disappear on effort)?
- (d) Is the blood pressure 200/110 or over?
- (e) Is hypertension treated by med: _____ years
- (f) Is a cardiac _____

YES	NO	Notes



The Irony of Cloning

- Cloning Defined: “Documentation is considered cloned when each entry in the medical record for a beneficiary is worded exactly like or similar to the previous entries.” (Medicare B Update, third quarter 2006 (vol. 4, No. 3)). Per the Office of Inspector General (OIG)
- But what if.....
 - Nothing changes at all or changes minimally. You did all the same things. What to do?
 - Insurers are not comfortable responding to this. Responses vary from the desperate (“**Something** had to change”) to the unenlightened (“It’s not medically necessary to do all the same things over and over”) to the unresponsive (“It’s just not appropriate”)
 - The redundant information is **also** required to support medical necessity.
 - Templates are often viewed as instruments of fraud or malfeasance, but you’ll be subjected to recoupment, fines, penalties and sanctions **if you don’t** capture all the essential info.
 - So, it’s bad if you’re redundant, but even worse if you’re not redundant.
- Procedure codes report procedures, a grouping of tasks that are performed together. **Coding is intrinsically redundant by nature.**
- Bottom line: **change what changes.**

COVID Confusion

- **What they said:** do what's necessary to get patients tested, educated and treated. We'll pay you.
- **What you did:**
 - Stayed open with limited resources
 - Experienced a significant loss in revenue
 - Incurred new expenses due to safety measures, interstate considerations, etc
 - Put yourself in harms way, every day
- **What they did:**
 - Audited you years later for services performed during the worst of times
 - Nit picked your documentation (“Where were YOU, the provider, during the telehealth visit?”)
 - Hope you forgot that screenings for asymptomatic patients were just as payable as those with symptoms
 - Forced you to pay back astronomical sums of money. They don't care if you had a skeleton crew, needed to close, lost a friend or family member, or got sick yourself

COVID Billing: May 2020 Snapshot

Remember things like this...

CPT Range	Description	Payer 1	Payer 2	Payer 3	Payer 4	Payer 5	Payer 6
99201-99215	Office/outpatient visit	Yes, 2 way video	Yes, 2 way video	Yes; telephone or video (ONLY 99201-99203, 99211-99213)	Yes; telephone or video	Yes; telephone or video	Yes; telephone or video
99421-99423*** G2061-G2063****	E-VISITS* On-line digital E/M: Virtual communication via portal	Yes; New & Est pts; POS 11; No modifier	Yes; DOS as of 3/16	Yes; Medicare Adv & NaviCare only	Yes; telephone		waiting for additional info
99441-99443* 98966-98968 **	TELEPHONE E & M Service (99441/98966 5-10min, 99442/98967 11-20, 99443/98968 21-30)	Yes; telephone. New & Est. patients; No modifier	Yes; telephone; No modifier needed	Yes, with POS 02 and Modifier 95	Yes; telephone	Yes; telephone	Yes; telephone
G2010	Virtual Check-in* Remote eval of recorded video and/or images	Yes; telephone; New & Est. pts; No modifier	Yes only for FEP and Med Adv plans)	Yes	N/A	Yes; for TMP & SCO only	N/A
G2012	Virtual Check-in* see Addendum for description	Yes; telephone; New & Est. pts; No modifier	Yes; telephone	Yes	N/A	Yes; for TMP & SCO only	N/A
G0438-G0439	Medicare Annual Wellness Visit	Yes; telephone or video	N/A	not on list	N/A	Yes; telephone & video	N/A
99381-99397	Preventative Visits	N/A	Yes	not on list		Yes;	
99495-99496	Transitional Care Mngmt (TCM)	Yes, 2 way video	Yes; 2 way video only	Yes; telephone or video	Yes; telephone or video	Yes; telephone or video	waiting for additional info
Overall Payor Notes		Refer to Addendum for all categories of Telemedicine per CMS. Can use smartphones	Covering all covid and non covid related. Also includes for MA, Mngd Blue for Srs and Medex.	Covering telemed for all Covid & non Covid srvc. Via audio/video.		Covering telemed for all Covid & non Covid diags. For all medical (well visits/preventive and sick visits), BH, ancillary health and HH care visits for new and existing pts'.	service dates eff. 3/12/20.
POS		Use POS where service would have originally occurred in-person	02	02	02	02	02
Modifier		95 (unless otherwise noted per code)	95 (but also GT, G0 or GQ); CR is n/a	95	95 or GT	95 or GT; NO modifier need for TMP or SCO	n/a (not required)
Payment/Pt Cost Share		Telehealth* codes paid same as inperson; can waive/reduce pt cost share	Waiving pt cost share for all in-network providers; Reimbursing same as in-person	Co-pays waived; cost sharing for SI plans may vary	Waiving pt cost share	100% in-network prov. contracted rate; telehealth reduction n/a; Waiving pt cost share	
Documentation	See Addendum tab						
Payor Links for latest updates	See Addendum tab						

* Physicians, osteopaths, podiatrists, optometrists, dentists, NPs, CNSs, PAs, CNMs and maxillofacial surgeons.
 ** NPPs, CNS, PAs, CNMs, CPs, SLPs, PTs, OTs, CSWs, registered dietitians or nutrition professionals and optometrists
 ***MD, NP, PA, CNS, CNM

... that changed weekly!

Coding Changes for 2024

CODE	2023 "total time ... spent on the date of the encounter"	2024 "total time on the date of the encounter" that "must be met or exceeded"
99202	15-29	15
99203	30-44	30
99204	45-59	45
99205	60-74	60
99212	10-19	10
99213	20-29	20
99214	30-39	30
99215	40-54	40

FMV ISSUES

CARDIOVASCULAR

- (a) Is there any history of cardiac infarction (coronary thrombosis), any persisting anginal pain, or any current need of treatment for anginal pain?
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YES	NO	Notes



Integrity of the Review Stream: Current FMV Trends

Topics:

- Perspective
 - As an investment banker
 - Transaction focused
 - Integrity of the revenue stream
 - Adherence to federal and state laws related to certain relationships/expenses
 - Quality of Earnings (QofE) Report
 - » Key element of financial due diligence
- Federal Regulations and State Regulations:
 - Physician Self-Referral Act
 - The Stark Laws
 - NJ: The Codey Law
 - Anti-Kickback Statute

Integrity of the Review Stream: Current FMV Trends

Investment Bankers and FMV

- FMV pervades our “process” as we evaluate a sell-side M&A or a capital raise/equity investment client opportunity
- Review a potential client’s pro forma financial performance
 - Establish a preliminary forward-looking adjusted and tradable EBITDA
 - Once formally engaged, create the Confidential Information Memorandum (CIM)
 - Deep dive into the revenue sources by physician, by CPT code and by payer, including referrals and any other contractual relationships
 - » Quality of Earnings (QofE) – usually done by the acquiring party, but our process has elements embedded in it since we want our work to stand up against the scrutiny a buyer brings to the table
 - Develop an understanding of the financial relationships among the parties involved – understanding any “arms length” contractual obligations
 - Scrutiny of referral sources
 - Over-treating patients

Integrity of the Review Stream: Current FMV Trends

- Issues with Fair Market Value
 - Determining FMV for physician compensation can be very complex
 - A simple salary survey does not cut it anymore if you are determining FMV for a physician compensation arrangement – they need to be commercially reasonable and fit into a context that can be defended to CMS if need be
 - Arms length transactions among the parties
 - Physician partners – compensation and income distribution patterns (equity ownership based only)
 - Medical directorships if an ASC or a Diagnostic Imaging Center and other
 - Rent/lease arrangements
 - Involvement of other related parties (family, for example)

TRENDING CRIMINAL AND NJ BME INVESTIGATIONS



Trends in Criminal Healthcare Investigations

1. Covid-19 related prosecutions
2. Impact on opioid prescribers
3. Multiple federal & state agency approach

Backtracking Covid-19 Potential Billing Fraud

COVID-19

- Prosecutions related to testing & billing fraud
- Investigation of improper referral arrangements

Standard of Review Updated by SCOTUS

RUAN vs. THE UNITED STATES

- Impact on opioid prescribers
- Supreme Ct. opinion in re intent of the medical provider when over prescribing opioid medications



Multiple Agency Approach

Federal & State Agency
Coordination & Multiple Agency
Intervention

1. FBI
2. OIG
3. DEA
4. IRS
5. New Jersey Office of Attorney General
6. Local Authorities: County Prosecutor



Board of Medical Examiners

Current Focused Investigation Efforts

- Professional Misconduct
 - Boundary violations & sex offense
 - Disruptive Physicians
 - Billing irregularities & Insurance Fraud
 - Opioid Prescription Monitoring
 - Scope of Practice
 - Co-Surgeon vs. Assistant Surgeon

QUESTIONS?



This presentation is intended to provide general information. It is not intended as a form of, or as a substitute for legal advice and analysis. Legal advice should always come from in-house or retained counsel. Moreover, if this presentation in any way contradicts advice of counsel, counsel's opinion should control over anything written herein. No attorney client relationship is created or implied by this presentation. No reproduction or dissemination without prior written consent from Brach Eichler, LLC. ©2022 Brach Eichler. All rights reserved.