

Valuing Medical Services at 100% of Full Charges – Adding Cash and “In-Kind” Contracted Values

By Lawrence “Lan” Lievense, FHFMA, FACMPE

CAOC: What the heck are “in-kind” benefits in provider-payor medical service contracts? What is the context we’re dealing with here?

Lan: What we’re talking about here is the assertion made by the defense that past medical damages can only be claimed in the amount that a health care payor – like an insurance company or HMO – actually paid the medical provider in cash, not what the medical provider actually billed for the treatment. That assertion is just plain wrong because, as I’ll explain, the cash payment is not the only consideration for the contract between the third-party payor and the medical care provider. The plaintiff is entitled to include the value of *all* the contractual consideration, not just the amount of the cash payment.

CAOC: Please clarify why we are having this discussion for the FORUM.

Lan: It was suggested by attorneys visiting my booth during the CAOC Annual Convention in 2006 that I publish information on “in-kind” contractual benefits and valuation of medical services. This suggestion usually followed my stating that “the value of medical services is *not* limited to the cash amount(s) paid by a third party insurance but *must include the value of both cash and ‘in-kind’ contractual benefits* as specified in the provider-payor contract and which makes the value of medical services equal to 100% of full, retail charges.”

CAOC: Before we get into “in-kind” benefits please briefly describe your background.

Lan: Most of my 33-year career in healthcare finance was in hospitals, managed care organizations and physician groups where I was responsible for

managing payor-provider contracts and collecting from third party payors including contracted insurances, workers compensation carriers and government payors. Details are in my C.V. at www.LawrenceLievense.com including some case descriptions, multiple professional certifications and four “clinical” years as a U.S. Navy Corpsman. In 2005, I resigned from direct healthcare administration to become fully available as a healthcare financial consultant and expert witness to the legal industry.

CAOC: Okay, then, what exactly are “in-kind” benefits in a contract between a health plan (payor) and a medical provider?

Lan: “In-kind” benefits are one of two broad payment categories in a contract between a medical provider and a payor. Most folks are familiar with the cash payment portion of the contract which is typically a percentage of retail (full) charges. The “in-kind” contractual category can include a wide variety of benefits which will be given by the payor to the provider, for example a fast claims payment guarantee. It’s critical to note that “in-kind” benefits are a valuable consideration in the payor-provider contract and reflect the value of the payment reduction by the provider from full retail charges. In a recent deposition, I referenced a notarized statement about contractual benefits from a hospital’s current chief financial officer whom I am not at liberty to identify, but who stated:

Those contractual rates are typically less than the standard charges rates for the medical services provided and reflect the contractual benefits provided by health plans – including, among others, shortened payment periods,



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listings in health plan provider sources and marketing advantages in the forms of advertising visibility.

CAOC: How many “in-kind” contractual benefits are there?

Lan: There are dozens, possibly hundreds, of different “in-kind” benefits which could be included in a payor-provider contract. During a deposition in December 2006, my testimony included submission of a list of 39 in-kind benefits. (Available at www.LawrenceLievense.com.) Examples include: accelerated payment processing; marketing assistance through listing on the payor’s web site and provider listings; exclusive agreements which limit local competition; limited time periods for denial management and dedicated, available staff at the payor to assist the provider with claims and denial resolution. Typically, most contracts include less than a dozen in-kind benefits but that depends on the negotiating skills of representatives from the provider and the payor.

CAOC: Is there a relationship between a contract’s “in-kind” benefits and the cash payment?

Lan: There is a direct, inverse relationship between “in-kind” payments and cash

payments. The lower the cash payment from full retail charges, then the higher the value of the in-kind benefits. Remember, this is a negotiation where both parties are seeking benefits from the other. The payor may state that the contracted cash payment will be 80% of charges. The provider may agree but also state that to give what amounts to a 20% cash discount the payor must contract for "in-kind" benefits, perhaps: that claims will be paid within 15 days, that the payor must provide a 24-hour system to verify patients benefits, that claim denials will be re-processed within 30 days with no retroactive denials beyond six months from payment and the payor will not contract with any competitor within 50 miles. The provider is effectively saying that the specified, in-kind benefits are equal to 20% of retail charges because they're willing to accept a cash payment of 80% of charges.

CAOC: Why are "in-kind" contractual benefits important to plaintiff's attorneys?

Lan: Please keep in mind that I'm not an attorney. However the cases in which I'm being retained ask that I testify on the valuation of medical charges. The question being asked is whether the services are worth the cash paid by a third party payors or some other value -- like the full retail medical charges. Part of the problem is that the first part of that question is incomplete. The answer, as I've suggested above, is that medical services are equal to

the total of what the payor actually paid which must include the value of both cash and in-kind contractual benefits. That amount is equal to 100% of billed charges and not just the cash portion of the contracted benefits. I've been told that this valuation has applicability as a "*Hanif* defense."

CAOC: How do you respond to challenges that your opinion of 100% valuation in payor-provider contracts places you in opposition to many precedents where the valuation was set at the cash payment(s) by payor(s)?

Lan: First - it's critical to realize that the valuation in payor-provider contracts is a fact and not an opinion. I'm simply stating, practically reading aloud the terms of payor-provider written contracts which I've been reading, negotiating and enforcing for 33 years. Contracted payors do pay 100% of retail charges through a combination of cash and other valuable considerations as specified in the contract. Therefore if the value of medical services is equal to what the payor paid, then the valuation is 100% of full charges. Anyone who says otherwise is simply misinformed or inexperienced in payor-provider contract administration or perhaps has another agenda. Stating that medical services are only worth the partial payment, specifically the contracted cash amount, makes about as much sense as saying that a \$50,000 car is only worth \$40,000 because a trade-in was worth \$10,000. The

value of the trade-in is an "in-kind" benefit just as payor-provider contracts have valuable in-kind benefits which the payor uses to reduce the cash payment and which the provider accepts as partial payment.

CAOC: Are "in-kind" benefits a new concept or is your opinion "new"?

Lan: In-kind benefits have been part of payor-provider contracts for decades. I've worked with contracts which included in-kind benefits as far back as 1974. Payors who fail to provide the in-kind benefits as contracted may be billed the full retail charges without a discount because they have not met the contracted terms. Please remember that this valuation is less my opinion and more a simple statement of fact about the payment terms in the payor-provider contract. It's a fact that medical providers give a cash discount in return for other benefits from the payor. That discount is not a gift to improve the payor's bottom line -- the provider gains a valuable benefit in return for the reducing the cash payment.

CAOC: How do you determine the value of in-kind benefits if the payor-provider contract is not available?

Lan: It's more complex to break out the value of in-kind benefits if a payor-provider contract is not available for review, but please remember that it's not necessary to calculate the value of "in-kind" benefits. Healthcare services are most often equal to the full, retail amount charged

by the provider. If an explanation of benefits (EOB) shows a cash payment of 80% then the in-kind benefit is probably 20%—the medical services value is still equal to the full, retail charges. This is not true for every payor in every account, particularly when government contracts or workers compensation are involved but the “full retail charges” is a valid starting point for valuation of medical services.

CAOC: Is it possible to place an actual dollar value to a specific “in-kind” benefit?

Lan: Yes. The specific dollar value of some “in-kind” benefits can and are carefully calculated by providers in preparation for contract negotiations to help decide how much of a cash reduction to give the payor. For example, Hospital A may be facing strong competition from Hospital B for patients using a specialized outpatient test, perhaps an MRI scanner. Hospital A has budgeted \$500,000 for marketing their scanner against the competing hospital. Now suppose Hospital A negotiates an exclusive contract with a large payor which says that patients covered under their plan may only use Hospital A’s scanner. Hospital A no longer needs to spend \$500,000 on marketing their scanner. Basically, the hospital has outsourced \$500,000 of marketing to the health plan. In return, the hospital gives the plan a contractual reduction off all charges of x%. The value of that “in-kind” marketing benefit is \$500,000.00. There are other examples where the value of in-kind contractual benefits can be calculated and that’s why a provider gives a plan a reduction off retail charges. Please note, though, that the value of the medical services is still 100% of full charges, the payment is just a combination of cash (discounted) and other valuable consideration.

CAOC: What, if any, geographical scope is attached to “in-kind” benefits?

Lan: “In-kind” benefits are international in scope as they can be built into any payor-provider contract. My consulting practice is primarily focused in California so I work with California attorneys and courts. However because payors are national in scope I also work with contracts which originated in out-of-state “corporate” payor offices. Geographic focus is

also expanding dramatically with international ramifications for health care. For example, the current expansion of health plans which write healthcare policies covering medical services in both Mexico and the U.S. will complicate valuation of those services – if only because of the difficulties of obtaining the medical records, charges and other documents.

CAOC: Thank you for using the FORUM and for being a CAOC contributing member. How do members reach you?

Lan: It’s my pleasure. CAOC is a very professional group and user-friendly to associate members. Call me anytime at: 805-389-1750 or Lawrence.Lievense@verizon.net. ■

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