



Considerations for Valuing Post-Operative Services in Optometry Co-Management Arrangements

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The Problem

Healthcare regulators have renewed interest in the financial and referral relationships between ophthalmologists and optometrists after several high-profile cases were brought last year by federal and state agencies against ophthalmology practices. In each of these cases, the ophthalmology practices allegedly created financial incentives for optometrists to provide them referrals for cataract surgeries, each resulting in multimillion-dollar settlement amounts.^{[1],[2]}

The impact of this increased governmental scrutiny is likely being felt by many ophthalmologists who currently engage in co-management arrangements with optometrists. Typically, these arrangements arise when a patient receives a referral from an optometrist to an ophthalmologist for a cataract or refractive procedure and then chooses to return to their optometrist for post-operative follow-up care. Depending on the specifics of the arrangement, the optometrist is then reimbursed or compensated for their follow-up services directly from the payer or patient or through a fee paid by the ophthalmologist.^[3]

As such, engaging in co-management arrangements where the ophthalmologist pays a fee to the optometrist may result in the existence of both financial and referral relationships between the ophthalmologist and optometrist. For that reason, these arrangements require compliance with the federal Anti-Kickback Statute (AKS), other federal regulations, and certain state laws (as applicable), or they risk liability for damages and penalties under the False Claims Act. In particular, the AKS establishes it is a criminal offense to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursable by a federal healthcare program.^[4] Providers should seek experienced healthcare counsel to assist them in navigating these regulations.

One of the elements of demonstrating compliance with these regulations, although not the only necessary element, is to ensure the compensation paid by ophthalmologists to optometrists for post-operative follow-up care is fair market value. The fair market value of these services, however, can be difficult to determine given the high level of variability among the types of procedures, the involved payers, and the specific nature of each arrangement.

With cataract surgeries, for example, patients can elect to receive either standard lenses or premium lenses. Premium lenses offer refractive benefits that standard lenses do not and therefore can cost significantly more. When deemed medically necessary, Medicare covers standard lenses for its patients but does not cover the additional fees associated with premium lenses. As such, Medicare patients

receiving premium lenses pay out-of-pocket for a portion of the associated fees. Meanwhile, commercial insurers differ in their coverage options, but many follow Medicare in covering standard, but not premium, lenses.

Similarly, Lasik and other refractive procedures are not typically covered by Medicare or commercial insurance providers; therefore, patients undergoing refractive surgery or cataract surgery with premium lenses typically pay the ophthalmologist out-of-pocket for a portion or the entire fees for these procedures. Oftentimes, the patient will pay the ophthalmologist directly for the procedure, and then the ophthalmologist will compensate the optometrist a specified amount for providing the post-operative follow-up care. In some arrangements, however, the patient may pay the optometrist their portion of the fee directly. Regardless, in each of these arrangements, the potential for referrals that could have Anti-Kickback Statute implications should be thoroughly analyzed.

For standard cataract lenses, Medicare provides a roadmap for payment based on its reimbursement practices for post-operative follow-up care. Specifically, when a Medicare patient undergoes standard cataract surgery that is to be co-managed by an optometrist, Medicare typically employs an 80/20 split of reimbursement between the ophthalmologist and the optometrist, respectively, implying the value of post-operative care is approximately 20% of the global fee.^[5] This particular split, however, cannot necessarily be applied to fees for premium cataract lenses, which can require increased pre-operative, operative, and post-operative resources and time. Further, the fee split cannot necessarily be applied for refractive procedures, thereby making it more difficult to determine the fair market value of the post-operative care provided by the optometrist. Additionally, as these procedures are largely or entirely paid by the patient, pricing can differ significantly between markets, leading to the potential for considerable variability in the value of post-operative services if calculated using the 80/20 split.

Given the complexity of determining the fair market value of post-operative optometrist services and the frequency with which practices are finding it necessary to obtain compensation valuations due to the recent increased governmental scrutiny, the following approaches, taken together, offer potential solutions for determining fair market value for the services.

Potential Solutions for Determining Fair Market Value

The Cost Approach

The cost approach may be the most intuitive to valuing post-operative optometrist services, as it borrows from the concept of Medicare's 80/20 reimbursement split for standard cataract procedures, as described above. Specifically, the cost approach involves considering the allocated portion of post-operative care as a percent of the total cost of the procedure to the patient, using the time required for each component (i.e., pre-operative, operative, and post-operative) of the procedure to determine the specific ratio of post-operative cost to total cost.^[6]

This approach can differ considerably from Medicare's 80/20 split in that the calculated ratio for premium cataract lenses and refractive procedures can be highly variable and therefore cannot be easily standardized across practices or procedures. Much of this variability stems from differences in the required time and resources for cataract procedures that use different lens types and for various

refractive procedure types. Further differences may lie in practice operations, such as each practice's policy on the quantity and length of pre-operative and post-operative appointments, which in turn affect the global time of the procedure.

After the allocated portion of post-operative cost to total cost has been determined, another factor that must be considered is ophthalmologists are typically compensated at a higher rate than optometrists. In practice, an ophthalmologist performing the post-operative follow-up care would be compensated more for those services than an optometrist, even though the required time would not necessarily differ. In consideration of this fact, the portion of the cost attributable to post-operative care by the optometrist, as described above, may be discounted to reflect the relative compensation level of an optometrist.

The Optometrist Cost Build-Up Approach

The optometrist cost build-up approach considers the amount of estimated post-operative time required and the optometrist's costs associated with that time. Costs may include items such as an optometrist's compensation, benefits, malpractice insurance, support costs, or overhead expenses. Typically, the amounts of compensation and other associated costs are determined using benchmark survey data or the optometrist's actual costs, if available.

Benchmark survey data offers a high level of standardization across practices and procedures; however, the optometrist's actual costs, if used, and the time required for the services may still vary considerably. The variability in the time required for the services can be attributed to the same factors described in the cost approach section (i.e., required resources for procedures). Conversely, the optometrist cost build-up approach offers a somewhat direct method to value the services based on the time actually required by the optometrist to perform the services and the value of that time as described by benchmark survey data or the optometrist's actual costs.

The Reimbursement Analysis Approach

A third approach to valuing post-operative optometrist services is to estimate what the optometrist may be reimbursed by a third-party payer (such as Medicare) if the post-operative services were billable. For example, an appraiser might analyze the Current Procedural Terminology (CPT^[7]) codes used by an optometry practice for a standard eye exam to determine a range of reimbursement by minute for a payer. This reimbursement rate can then be used along with an estimate of post-operative follow-up time to calculate estimated reimbursement for post-operative follow-up care.

Conclusion

Taken together, these approaches provide methods for potentially valuing post-operative services provided by an optometrist, using the direct methods offered by the cost approach and optometrist cost build-up approach and the indirect method of the reimbursement analysis approach to document the overall regulatory compliance and payment related to an optometry co-management arrangement.

As mentioned throughout this article, the value of these services cannot be determined using a one-size-fits-all approach. Significant variability can exist between procedures, even those within the same categories of cataract surgeries with premium lenses and refractive procedures and between

market pricing for these procedures. Further, ophthalmology and optometry practices carry operational variability that can alter the relative value of the post-operative follow-up services.

In consideration of recent litigation relating to, and therefore increased scrutiny of, optometry co-management arrangements, ensuring compensation paid to optometrists for their services is fair market value is one of several necessary steps ophthalmology practices and providers must take when entering these arrangements.

[1] US Attorney's Office, "Ophthalmology Practice Agrees to Pay Over \$2.9 Million to Settle Kickback Allegations," <https://www.justice.gov/usao-edtx/pr/ophthalmology-practice-agrees-pay-over-29-million-settle-kickback-allegations>; accessed on April 19, 2024.

[2] PR Newswire, "SouthEast Eye Specialists Pays \$17 million to Settle Anti-Kickback, False Claims Act Allegations," <https://www.prnewswire.com/news-releases/southeast-eye-specialists-pays-17-million-to-settle-anti-kickback-false-claims-act-allegations-301812112.html>; accessed on April 19, 2024.

[3] The subject of this article is limited to fees paid by the ophthalmologist.

[4] OIG Advisory Opinion No. 11-14

[5] Palmetto GBA, "Medicare Coverage of Optometry and Co-management Services," <https://www.palmettogba.com/palmetto/jjb.nsf/DIDC/B9LP5Q2515~Specialties~Optometry%20and%20Ophthalmology>; accessed on April 19, 2024.

[6] It is important to note that obtaining provider agreement on the time required for the post-operative services performed by an optometrist is crucial to valuing these services.

[7] Current Procedural Terminology (CPT® or CPT), a registered trademark of the American Medical Association.