

SCHAUM LAW OFFICES

600 Old Country Road, Suite 328, Garden City, NY 11530
516-228-8766 Fax: 516-228-3559 SCHAUM@SCHAUMLAW.COM

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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

The issue was recently presented to our office, - may an “in-network,” (INN), physician establish a new and separate practice in order to bill a carrier as an “out-of-network,” (ONN), entity?

A physician presented the fact-pattern in which they were seeking to open a new Practice, under a new Tax ID number, an unrelated service location, offering similar along with additional services from the enrolled/participating practice.

The answer often lies in the wording of the individual “Provider Group Services Agreement(s).” Agreement language often mirrors the following: “Participating Provider means a hospital, physician or group of physicians, or any other health care practitioner or entity that has a direct or indirect contractual arrangement with CARRIER to provide Covered Services with regard to the Benefit Plan covering the Participant.”

“Group’s represented Providers shall comply with the terms and conditions of this Agreement to the extent applicable and shall look solely to Group for compensation for COVERED SERVICES.”

In this example the foregoing language would be deemed to apply to all services provided to Plan Participants covered by the Agreement, including services covered under a Participant's “INN” or “ONN” benefits, whether the Payor or Participant is financially responsible for payment.

Accordingly, the terms of the physician's in-network agreement would apply to billings of the new practice.

Upon the physician's contact with provider/contracting relations, (with both Aetna and Cigna), the physician was verbally advised that a new practice could bill as an out-of-network practice, HOWEVER, upon our office's communication with the respective legal department(s), we were informed that the language of the Provider Agreement would rule! In other words, one should always proceed with caution prior to acting in reliance of a verbal communication.

To be noted, under a different scenario - if a new practice were to bill for services under a new Tax ID number- the carrier may not be as forthright as to apply the terms of the existing agreement, and to allow the practice to bill as a new "Provider" prior to certain protocols being met.

Respectfully submitted.

Schaum Law