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Metro NY HFMA Newscast Schedule

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An Odd Twist To “Out Of Network” Physician Billing
James G. Fouassier, Esq., Elizabeth Carnevale, Roy Breitenbach, Esq.
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HFMA Annual Institute........................................................................Page 19
It is hard to believe my term as President is coming to an end. As I sit preparing my last President’s message, I am elated by our Chapter’s success in meeting our mission by exceeding our primary goal of providing relevant and timely educational opportunities that our Chapter members took full advantage of. This was most evident at our premier event, the Joseph A. Levi Annual Institute, which had over 500 attendees. Under the leadership of Christina Milone, Sean Smith, Donna Skura, Kiran Batheja, Jim Argutto and Bob Jacobs, the entire Annual Institute committee worked tirelessly to provide a stellar two-day event. The educational sessions were highly informative; the vendor fair and networking activities were enjoyed by all.

The Annual Institute committee recognized the growing number of attendees, year after year, and made a decision to “Go Beyond” tradition; they moved the event from its former location to a new venue, which was a tremendous success. During the Institute, our Chapter celebrated its 60th anniversary; our longevity has been made possible by the commitment, dedication and cohesiveness amongst members and volunteers, who work tirelessly to plan and deliver high quality educational opportunities.

This has been a banner year for Certification within our Chapter. National HFMA introduced a new format for achieving certification which proved to be wildly successful for Metro NY. We had nine members pass the two-part exam earning them the CHFP designation.

Our Social Events Committee did a spectacular job this year, providing fun networking events for our members and their families. Special thanks to Kiran Batheja, John Coster and John Mertz for your time and dedication to our chapter. I would like to thank the Newscast Committee, under the leadership of Chair Marty Abschutz, who provide our membership with relevant articles on healthcare topics, as well as current events occurring within our chapter.

I would like to recognize our Community Outreach Committee Chair, Josephine Vaglio, who has independently provided many thousands of hours of education to seniors in our community throughout the years. Thank you, Jo, for your dedication and continued support to our Chapter and the communities we serve.

May 4th is the date for our Annual Business meeting. It is being held at The Inn at New Hyde Park. Please join us in installing our new slate of officers and Board members. I know the Chapter will be in excellent hands with David Woods as incoming President, Maryann Regan as President-Elect, Mario Di Figlia as Vice President, Diane McCarthy as Treasurer and Donna Skura as Secretary. They are a strong leadership team that will be supported by a strong Board of Directors and the Chairs of the various committees along with wonderful volunteers. Please consider volunteering to serve on a Committee, next year. I am confident it will be a rewarding experience.

I want to thank all of our Corporate Sponsors and our volunteers for your generous and unwavering support. Your support enables our Chapter to provide high quality educational opportunities to our members.

Meredith Simonetti, FHFMA
President
Many of you know that I am an avid bicyclist. You can guess how thrilled I am that the weather, finally, seems to be turning milder and biking-worthy. It also means that this is the final Newscast edition for the 2015/2016 HFMA year. Some of you may have participated in the celebration of the 60th anniversary of the Metropolitan New York Chapter of HFMA, during the President's Reception at the Joseph A. Levi Annual Institute (see our cover photo). We are taking this opportunity to continue the celebration of the 60th anniversary here.

We have included photos from some former (hard copy) Newscast editions in this issue, as part of the celebration. See if you can pick out a colleague's photo from years ago or your own photo. We will continue to feature photos from former editions throughout the 2016/2017 HFMA year. Stay tuned for those same opportunities to find a “younger” colleague or younger self, in an older edition. In addition, a few of our fellow members have shared their thoughts on what Metro NY HFMA has meant to them, during their membership.

This issue features the second article submitted through our Advisory Panel. Jim Fouassier covers a surprising issue: how a health insurer brought suit against a hospital and a physician who balance billed a member for out-of-network services. Sometimes truth IS stranger than fiction. Also, I’m pleased to announce a competition for submitting an accepted article to our Advisory Panel. Submit an article for the Advisory Panel’s review. If they accept your article for publication in Newscast, you will win free admittance to a seminar of your choice, excluding the Joseph A. Levi Annual Institute.

No spring Newscast would be complete without our expansive photo spread of Annual Institute photos. We do our best to be as inclusive as possible, including exhibitors, presenters and attendees. I am solely responsible for any omissions or awkward photo inclusions. Feel free to let me know the good and the bad at HFMA.Marty@gmail.com. Please keep in mind there are more photos shown on our Facebook page.

Since you’ve read this far, I will tell you what the Chapter Board of Directors has planned. This issue of Newscast will be sent to every member in a hard copy form. (We might even add some additional photos from older editions in the special hard copy issue.) This is the first hard copy we’re sending to the membership, since we went green, a few years ago, under Susan Montana’s, former Newscast Editor’s, leadership.

Thanks to Jim Fouassier for his able Assistant Editorship. Thanks to Meredith Simonetti, soon-to-be Immediate-Past President, for her columns. Thanks to all of you for your membership and readership. I will end with my thoughts on my HFMA membership. HFMA has enabled me to meet some outstanding people in our industry. It has provided me opportunities, like this one, that I, otherwise, would not have had. I feel I have received much more than I have given. I believe you’ll find that the same will apply to you, if you take that small step to be involved.
2016 IMPORTANT DATES

May 4, 2016  
**Annual Business Mtg**  
Inn at New Hyde Park

May 14, 2016  
**Family Bowling Night**  
AMF Sheridan Lanes

July 28, 2016  
**Oktoberfest**  
Plattduetchse Park Restaurant in the Beirhalle

September 26, 2016  
**Annual Chapter Golf Classic**  
North Hempstead Country Club

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The Metropolitan New York Chapter of HFMA
Proudly Welcomes the Following New Members!

By Robin Ziegler, Membership Committee Chair

MetroNY HFMA is pleased to welcome the following new members to our Chapter. We ask our current membership to roll out the red carpet to these new members and help them see for themselves the benefits of HFMA membership. Encourage them to attend seminars and other Chapter events. We ask these new members to consider joining a Committee to not only help the Chapter accomplish its work, but to expand their networks of top notch personal and professional relationships. See the list of MetroNY HFMA Committee Chairs, along with their contact information, listed in this eNewsletter.

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<td><a href="mailto:dskura@numc.edu">dskura@numc.edu</a></td>
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<td><a href="mailto:matt.schwartz@fticonsulting.com">matt.schwartz@fticonsulting.com</a></td>
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In honor of the chapter’s 60th anniversary, I am thrilled to have the opportunity to share memories with my fellow Metro NY Chapter members.

Then I realized, with almost 25 years of my own experience with HFMA – where would I begin? Is it my first seminar, where I first realized how many peers I had in the industry, and that if I reached out to them they could help me do my job well? Is it the first time I went to the Annual Institute, where I was able to connect with my old co-workers from Blue Cross – something that happened every year after that and was the part of attending the annual institute I enjoyed the most for many years to come? Maybe it was my ANI trips – where I was able to see cities that I never would have visited otherwise, and to connect with so many people that became my friends – and still are to this day.

The list can go on. HFMA was at first for me an organization where I attended seminars, and was out of the office for a day. Then I became more involved, and as so many people will tell you, I received so much more than I gave. I could go on for paragraphs about how I have become a better person, and leader, because of my experiences with HFMA and the people that are part of it. Anyone who has been on this journey with me understands exactly what I mean. And for those of you who are not involved and don’t understand what I mean – I can only say it’s your loss.

There are probably dozens of memories that flash through my mind when I think about my experience with HFMA. The specific memories don’t matter. The experience does.

Happy 60th Birthday to the Metro NY HFMA Chapter. I am proud to be part of its history – and its leadership team.

Diane McCarthy

HFMA Metro has been more to me than just a healthcare organization. Over the 12 years I have been a member of the Metro chapter, I’ve had and continue to have such a great time with great friends and colleagues that I would have never met if it were not for this great chapter! It’s simply the Best!

Thank You,

David Woods
Director | Patient Financial Services
Mount Sinai Health System | New York Eye and Ear Infirmary
Memories: Dad (Tony Heckel) joined HFMA in the early 60’s after every seminar he’d bring home hard candy that was left over at the end of each day. Mom had a huge candy bowl in the living room that was always full. In the summer we’d all go to HFMA picnics, where as a teenagers I helped with games for the little kids. In 1992 I told dad my husband was leaving the air force and we wanted to come home. The next week dad attended a HFMA conference and ran into the VP of Reimbursements at BI who remembered me from my years at E+W on the audit. Long story short, I got one job in the new cost accounting department at BI, and 24 years later, I’m the one going to conferences, seeing old friends & always learning new things about our ever-changing industry.

Fran (Heckel) Knapp  
Stony Brook University Hospital

As a life long learner and student the commitment to continuing education by HFMA is both enriching and enduring. I am deeply grateful.

Harris Brodsky  
Professor, Hofstra University

HFMA has always been a truly resourceful source for education and peer leadership within the healthcare organizations. HFMA is an outstanding way of building great relationships and developing those relationships in all spectrum of the industry. It was truly my honor to serve the Metro NY Chapter membership.

Wendy Leo, FHFMA  
Tritech Healthcare Management
IN HONOR OF METRO NY CHAPTER’S 60TH ANNIVERSARY

What HFMA means to me…. HFMA helps me to keep up to date on industry news and professional issues. The seminars educate me on new concepts and skills and when I have at least one take away, it is worth the attendance! Most importantly, I get the opportunity to network with colleagues and peers who act as resources amongst different areas in healthcare. I am able to pick up the phone and reach out to industry experts with questions who offer insight into issues or problems. I am grateful for the professional and personal relationships that HFMA has granted me throughout the years.

Maryann J. Regan
Director of Patient Financial Services
Winthrop University Hospital
IN HONOR OF METRO NY CHAPTER’S 60TH ANNIVERSARY

Life Cycle Cost
by Marty Abschutz, CPA
Health Care Consultant
Management Consulting Services
Ernst & Whitney

Marty Abschutz earned his B.S. in Accounting from Brooklyn College of CUNY in 1979. He has worked on the New York Audit and Consulting staffs of Ernst & Whitney, spending 100% of his time serving the Health Care industry.

Since joining E&W’s Health Care Consulting staff during 1982, he has developed a life cycle cost analysis model for a client, performed market share analyses by service and developed various microcomputer software programs.

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Metropolitan
New York Chapter Honors:

PETER S. LEVITAN
Immediate Past President

www.hfametrony.org
My readers may recall several articles I wrote, some time back, discussing legal and financial problems related to health plan members using “out of network” providers. The subject was also raised in the last issue of NewsCast in the Advisory Panel’s article, What Good is a Managed Care Organization (MCO) Network Agreement Anyhow? No matter from what angle you view the subject of out of network payments, there are major barriers for providers to get paid, major liabilities for healthcare consumers, and a political football for healthcare plans. As I then explained, health insurers and plans control costs in two ways.

BACKGROUND – OUT OF NETWORK - THEORY & PRACTICE

First, they maintain networks of contracted “in network” providers – all kinds of clinical services, from hospitals to specialty clinics to physicians, specialists, therapists, community health agencies, nursing services; you name it – that bind themselves to the plans by their agreements to accept discounted fees and to submit to an assortment of conditions for approval of services in advance. The idea is to control the number of patient utilization “encounters” and the costs of each encounter by imposing contractual conditions on access and eligibility for payment of claims. The other way is by imposing “cost shares” on their members: copayments, deductibles and coinsurance (usually a percentage of a billed claim). Cost shares are modest or non-existent when the member elects an “in network” provider; they can be very significant if the member’s plan covers out of network services and the member elects to use an out of network provider.

The latest models of healthcare delivery systems almost always include “narrow” or limited networks of providers and fewer and fewer out of network benefits, if any, other than in emergency situations. As of this writing, not one of the new ACA “exchange” health plans licensed to do business in New York offers any such out of network benefits. However, some plan sponsors and insurers accurately discern that a portion of customers want access to “out of network” providers, especially for specialists and specialty hospital services; importantly, they are willing to pay additional premiums for plans that cover the costs of those out of network services.

Unfortunately, even sophisticated and educated customers often do not appreciate the limitations on the kind and extent of costs covered, nor understands the complex provisions of even a standard health plan benefit design. Since out of network coverage and the benefits established for out of network care often are more generous than those paid to in network providers, the bottom line is that someone pays more when a plan member goes out of network; the member or the employer (or both) pay a higher premium for the privilege and the member then pays more “out of pocket,” when he or she uses the out of network service.

The out of network provider is not under a contractual duty to accept what the plan pays, and, in most cases, the member-patient may find that he or she bears a significant balance as his or her personal responsibility. This aspect of a health plan’s benefit design is intentional; not only does it keep down costs when a member has to pay a significant share of his or her health care bill, it also serves as a real disincentive for selecting out of network care: nothing discourages repeat use of a non-network provider than a four-figure “balance billing” arriving in the mail box! Just think of the irony; you and/or your employer keep paying a higher premium for an out of network benefit that you’ll, likely, never use a second time, after having been financially burned the first time you used it!

Out of network providers understand this. Often they will “compromise” a claim balance, based on a variety of factors to accommodate the patient’s significant personal financial responsibility. So, what happens when a provider agrees in advance
to assume any member balance? First, such an agreement neutralizes the disincentive effect we just discussed. In fact, Medicare regulations expressly prohibit the routine waiver of beneficiary responsible shares for just that reason. In commercial (i.e., insured risk and employer-sponsored) plan contracts, the member usually is expressly bound by the terms of the health plan agreement to pay all cost shares the plan determines to be the personal responsibility of the member. Second, such an agreement facilitates what some critics, regulators and courts have been less reluctant of late to characterize as “fraudulent” billing.

Here’s an example. Let’s say that I’m an out of network provider and my usual charge is $1000. You (the patient) tell me that your plan covers the service as an out of network benefit, but only will pay 80% of the charge. I say, “OK; I’ll accept whatever your plan will pay.” So how much is my bill to your insurer? To get $800, which is what I agreed to accept, I have to bill $1000. But didn’t I already agree with you, the patient, to perform the service for $800? So, what do we call my $1000 claim when I know I’m only entitled to $800? “Fraudulent” is the term that comes to mind.

Some health plans have jumped all over this, using these arguments to sue out of network providers to compel them to stop waiving member balances. Their theories have included common law fraud, “health care fraud” and interference with contract (i.e., the provider “interferes” with the contract obligations the member takes on when he or she signs up with the health plan). Litigation or not, what every health plan will tell us is that out of network “balance billing” not only is a good thing, it is essential if the cost of health care is to be maintained at a financially acceptable level by encouraging members to stay in network.

**HERE’S WHERE IT GETS WEIRD – THE LAWSUIT**

An example of how this can play out arose when a sixty-year-old patient suffered complex injuries to both arms in a fall. Her local hospital transferred her to Westchester Medical Center. Among other orthopedic surgeons, the hospital utilizes the services of a well-known and highly qualified trauma specialist, who was not a participating provider in the health plan that covered the patient. The health plan paid a fraction of the surgeon’s bill, resulting in the hospital “balance billing” the patient on behalf of the surgeon.

You’d imagine that this is precisely what the health plan would have wanted the out of network provider to do; discourage the patient from going out of network the next time. There were in network surgeons available and the situation, although serious, did not appear to require immediate surgery that only this surgeon could perform. Lo and behold, however, and much to my surprise, the health plan sued the hospital and the surgeon precisely because it balance billed the member!!


The plaintiff health plan based its claims on several interesting legal theories. One was that the surgeon billed the member in order to collect unlawful, excessive and unenforceable charges “in order to inflict emotional distress on the member and to interfere with United's relationship with plan members and sponsors.” Another was based on New York General Business Law Section 349(a), prohibiting fraudulent and deceptive “business practices” that affect consumers.

United claimed that the balance billing evidenced a scheme to defraud consumers, the plan and the general public, through a pattern of submitting false and misleading claims. Why were they false and misleading? United said that the charges submitted by the provider misrepresented the “actual charges” that should have been billed, since there was no valid agreement between the member and the surgeon as to what the charges should be, and since the charges were “excessive and unreasonable.” (Ask yourselves, if there was no agreement between the surgeon and the patient then how could there be any way to determine “actual” charges?)

In its ruling, the Court examined United's positions. Finding that there was no express agreement respecting payment, the Court applied the common law rule regarding implied contracts:

United's position is simply wrong. The common law rules are clear...Absent an agreement between United
and [the surgeon] (and/or his medical group). United has no basis for interfering with [the surgeon]'s common law right to seek recovery for the reasonable value of his services from the patient who received them…

Regarding the claim based on General Business Law 349(a), the Court held that United was not a “consumer” and, thus, not entitled to relief under the statute:

To the extent that Defendants filed claims with United, United did not receive them as a consumer of the medical services provided by [the surgeon], but in (sic) as part of its business activities as a health insurer…

To the extent [United] is claiming that Defendants misrepresented the charges to the United member by charging excessive rates in order to maximize the reimbursement they received from United, such allegedly deceptive acts were not directed at the consumer but rather to a large institutional provider of health insurance or, even more indirectly to the plan sponsors who might see their premiums increase. Such conduct cannot be viewed as consumer related…

Lastly, the loss, if any, was not United's and United had no cause to complain:

Further, United has not shown it is likely to succeed in establishing that it suffered any damages as result of any misleading billing by Defendants. United has refused to pay the allegedly excessive portion of the charges. The patient has not paid them either. And, even if she did, United has not shown how that would cause it to suffer any concrete...It is not uncommon for some medical providers to refuse to accept a patient's insurance and to require the patient to pay the charges and for the patient to pursue an insurance claim. Absent presentation of an agreement with [the member-patient] (or any other insured) whereby Defendants agreed to limit the patient's obligation to the proceeds of insurance, or a statutory restriction, there is no reason why Defendants would be (sic) free to seek the balance of their fees from the patient in question.

The Court also declined to find that New York's newly created FAIR Health database had any greater value than any of the more traditional ways of determining what “fair and reasonable value” might be.¹

…in any event, as Defendants point out, United has failed to show how it applied the information in the database to the charges imposed by [the surgeon] for the complex surgical procedure performed on [the member-patient]. While it is clearly United's position that [the surgeon]'s charges are excessive, United has not offered any evidence in support of that position.

It is important that the Court did not consider the question of whether the patient gave the surgeon an assignment of benefits (or, more correctly, an assignment of payment), which may have had a bearing on some important legal issues. Yet how could there not have been an assignment? The plan tendered payment not to the patient, but directly to the hospital, on behalf of the surgeon. Medical records and information presumably were exchanged between the hospital (acting on the surgeon's behalf) and the health plan. Providers know that there must be some documentary basis to receive payment for these services, yet the Court must have presumed that there was none because nothing was introduced into evidence about any assignment.

So, then, just why would a health plan even bring a case like this? I can only speculate, and here goes. Two possibilities: First, the simpler and more obvious reason. Health plans know that in an out of network situation, the patient is the provider's best ally. When a member receives that big balance bill, the first impression isn’t that the provider overbilled; it's that the insurance “that I pay plenty for didn't pay all of my bill and left me holding the bag.” Unlike busy providers dealing with hundreds of claims, the individual member has the time and motivation to keep after the plan to pay more. Complaints are filed with the plan, and then with the Departments of Health and Financial Services and the Better Business Bureau. Members call their representatives in Congress and the state legislature asking for help; this often generates "legislative inquiries" that get the plan's attention. Members bad mouth their health plan to their friends and neighbors and, more and
more often nowadays, on different blogs. Sometimes members even sue their plans. One good way for plans to deflect a lot of this heat is to tell the member that the claim was excessive. If a case like this is a winner, it would go a long way in helping plans do just that.

The subtler and more complex reason requires the reader to appreciate that, as we move forward into the brave new world of health care reform, legislatures and regulators are putting more pressure on health plans and health care providers to take patients out of the payment mix. New York’s recently enacted Emergency and Surprise Billing Law is only one example of the kinds of political responses being advocated more and more often. These kinds of laws are designed to discourage health plans from paying too little on an out of network claim, while discouraging providers from billing too much on an out of network claim. The resolution mechanisms, either some form of arbitration (as in the case of the New York law), judicial fiat, or other process that a patient can elect in the event he or she receives a balance billing, effectively may render the balance billing of the patient irrelevant. Appreciating this subtlety, and the direction in which this policy issue is moving, what better way to avoid the consequences of cases going against it than for the health plan industry to start pushing back on what the plans perceive to be the unfettered right of health care providers to balance bill for whatever “retail” charges the providers arbitrarily establish?

James Fouassier, Esq. is the Associate Administrator of the Department of Managed Care at Stony Brook University Hospital, Stony Brook, New York and Co-Chair of the Chapter’s Managed Care Committee. His opinions are his own and do not necessarily reflect those of Stony Brook University Hospital, the State University of New York, the State of New York or the Healthcare Financial Management Association. He may be reached at: james.fouassier@stonybrookmedicine.edu

ENDNOTE:

1. “FAIR Health is a national independent, not-for-profit corporation whose mission is to bring transparency to healthcare costs and health insurance information through comprehensive data products and consumer resources. FAIR Health uses its database of billions of billed medical and dental services to power a free website that enables consumers to estimate and plan their medical and dental expenditures. The website also offers clear, unbiased educational articles and videos about the healthcare insurance reimbursement system.” http://fairhealthconsumer.org/
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