

KEEPING CURRENT

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Insurer De-Listing: An Overview for Health Care Providers

By Lad Kucis

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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One of the worst things that can happen to a health care practitioner or clinic (each of which is referred to below as a "provider") is to be de-listed by an insurance company.

If an insurance company de-lists a provider, this means that it will no longer process or pay claims for services or supplies obtained from that provider, on an indefinite basis. The insurance company will also place the name of the provider on their "de-listed provider" list, which is typically available to its plan members.

As will be discussed below, being de-listed can have career-altering ramifications on a provider, especially if the de-listing involves a large insurance company.

Why Are Providers De-Listed?

The main reason why an insurance company de-lists a provider is if they believe the provider has engaged in fraud or otherwise abused the insurer's health benefits plan. Such concerns typically originate from either a plan member complaint or from irregular billing patterns identified by the insurer's fraud detection software.

Prior to de-listing a provider, the insurance company will typically conduct an investigation into the matter, which may include, among other items, a review of patient charts and billings; an investigator posing as a patient to ascertain clinic practices; and interviews with the provider. Such investigations are performed by increasingly sophisticated fraud investigation units, which may consist of health care practitioners, ex-law enforcement professionals and trained fraud investigators. The extent of the investigation and the opportunity to respond, if any, varies from insurer to insurer, and the nature of the conduct at issue.

In certain cases, an insurance company may demand reimbursement of alleged overpayments or false invoices. Providers should not assume, however, that providing a reimbursement will necessarily result in a more favourable investigation result.

More recently, insurance companies have also started to de-list providers if they become aware that the provider has been the subject of a disciplinary finding before their regulatory college –

especially in respect of health benefits fraud or abuse. It is imperative that legal counsel acting for providers in disciplinary matters advise their clients of this risk prior to any admission of professional misconduct being made.

How are Providers Notified About Being De-Listed?

Providers are notified about being de-listed via a standard form letter from the insurance company. The letter generally provides very short reasons for the de-listing, often in bullet point form, without any additional information. In some cases, the rationale provided can be as simple as “sub-standard recordkeeping” or “non-compliant administrative practices”.

Increasingly, insurance companies are also sending letters to plan members advising that their provider has been de-listed.

Impact of De-Listing

The impact of being de-listed is severe and extends far beyond no longer being an approved provider for a particular insurance company.

Almost invariably, the insurance company will also file a complaint about the provider with their regulatory college. The complaint will be investigated by the college, which may result in a caution or a finding of professional misconduct, the latter of which would typically carry a suspension. As these types of results are posted on the college website, there is a very real chance that the provider may be de-listed by one or more additional insurance companies that may be conducting a spot check of college websites. It is also important to note that in these types of cases, the de-listing is typically automatic, without any independent investigation being conducted.

In serious cases, an insurance company may also file a report with the police, which can result in criminal charges against the provider.

If a de-listed provider operates a clinic, the

provider may find it very challenging to retain their health professional staff, as de-listings are not typically limited to the provider but extend to all services and supplies provided at any clinic operated by the provider.

Another significant consequence of being de-listed is that a provider will find it extremely difficult to secure employment, as most clinic operators do not want to hire a provider who has been de-listed by an insurance company.

A de-listed provider is also at a heightened risk of patient complaint, as patients often re-assess their own experiences with a provider once they discover that they have been de-listed by an insurance company. De-listed providers also find it embarrassing advising patients that they have been de-listed, including the reasons why, and the implications of the de-listing on the patient.

In virtually all cases, patients will leave a provider if they have been de-listed as an approved provider by their insurance company. This can be a catastrophic situation for a provider's business.

Can a Provider Appeal a De-Listing?

A provider can appeal a de-listing decision, but such efforts are often futile, especially since appeals are reviewed by a committee from the same insurance company, and in most cases, a full investigation has already occurred. An appeal may be successful, however, if there is a clear explanation for the concerns at issue.

A provider may wish to consider seeking reinstatement in the future, especially if they have taken extensive remedial steps (i.e. coursework, practice audits, etc.). Unfortunately, in most cases, the chances of reinstatement are quite low.

In my view, the best chance at reinstatement is if new information emerges that calls into question the validity of the original de-listing decision. For example, a de-listed health



practitioner may wish to request reinstatement if a recently released criminal or regulatory decision reveals that another party (i.e. a clinic operator, etc.) was the perpetrator of the benefits fraud/abuse.

Final Thoughts

To assist providers, I would like to set out some final thoughts on the topic of insurer de-listing:

- Be mindful that being found guilty of professional misconduct in a college disciplinary matter could result in an automatic de-listing by an insurance company;
- Take all communications with insurance companies very seriously and remember that all telephone calls are recorded. Do not feel rushed into a discussion if you are not in a position to speak to the matter in a fully informed manner;
- Seek legal advice if you are at all concerned that an insurer audit or investigation could result in negative findings;
- If an insurance company identifies concerns in respect of potential billing fraud/abuse, you must ensure that the concerns are addressed in a complete and thorough manner, to the satisfaction of the insurer;
- If an insurance company suggests that you take certain corrective actions or remedial steps, you should seriously consider following such recommendations, especially if it advises that no further action will be taken; and
- If you are de-listed, carefully determine if there are any

explanations that could be provided that would address the concerns at issue. If so, you should consider an immediate appeal of the decision.

Ultimately, the best approach is to not engage in any conduct that could be construed as benefits fraud or abuse. Insurance companies are becoming increasingly vigilant in their investigations into alleged fraud/abuse and being de-listed can destroy a career.

About the Author

Lad Kucis is certified by the Law Society of Ontario as a specialist in health law and provides advice and representation to regulated health professionals and health care clinics regarding all types of regulatory matters. This includes, among other items, complaints/investigations before health professions colleges and audits/investigations involving insurance companies.

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