Insurance Fraud, Minors and Privilege, Neglect

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INSURANCE FRAUD – REMINDERS

According to the National Health Care Anti-Fraud Association, which is an organization founded in 1985 by several private health insurers and federal and state government officials to combat health care fraud, the most common fraudulent acts include, but are not limited to:

1) Billing for services, procedures and/or supplies that were never provided or performed;

2) Intentionally misrepresenting any of the following, for purposes of obtaining a payment – or a greater payment – to which one is not entitled:

1. a) the identity of the provider or the recipient of services, procedures, and/or supplies; and
2. b) the nature of services, procedures, and/or supplies provided or performed;
3. c) the dates on which services and/or treatments were rendered;
4. d) the charges for services, procedures and/or supplies provided or performed
5. e) the medical record of service and/or treatment provided
6. f) the condition treated or the diagnosis made
7. g) the charges for services, procedures and/or supplies provided or performed

3) The deliberate performance of medically unnecessary services for the purpose of financial gain.

Read the above examples of health care fraud again and think carefully before complying with a patient request that might involve any of these practices.

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MINORS AND PRIVILEGE

Each state treats this subject somewhat differently, and in some cases, it is not easy to determine who the holder of the psychotherapist-patient privilege is when the patient is a minor. I have previously

written about this subject and indicated that in many instances, the child is the holder of the privilege where the child is the identified patient. This may be so, at least in some states, even where the child is of tender years. For example, case law in California has held that a child who was seven years of age was the holder of the privilege and the child's therapist was the one who could and should assert or claim the privilege on behalf of the child.

In juvenile dependency cases, where a child may be removed from the home as a result of suspected child abuse, the determination of who the holder of the privilege is may be quite difficult. For example, in one state the law provides that either the child or the counsel for the child may invoke the psychotherapist-patient privilege. If the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. These provisions apply, with the informed consent of the child, if the child is found by the court to be of sufficient age and maturity to so consent. The capacity of the child to give informed consent is presumed, subject to rebuttal by clear and convincing evidence, if the child is over 12 years of age or older. Counsel is the holder of the privilege if the child is found by the court not to be of sufficient age and maturity to consent. The law provides that counsel for the child shall have access to all records with regard to the child maintained by, among others, a health facility or health care provider.

What is the law in your state regarding this complex determination re: holder of the psychotherapist-patient privilege? It is important to remember, when dealing with privilege, that the mental health practitioner's duty is to protect the patient's privacy and to protect the privilege until such time as the holder of the privilege has been identified and a waiver of the privilege is clearly established.

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NEGLECT – NO MEDICAL TREATMENT OF CHILD and TREATMENT BY PRAYER

What if a licensed mental health practitioner learns during the course of providing services that a child is not receiving medical treatment for religious reasons or that the parents have arranged for treatment of a child solely by spiritual means through prayer? Is the practitioner required to report this information to the appropriate governmental agency because it constitutes child abuse/neglect? The answer to this question necessarily depends upon state law and upon the facts and circumstances of each particular situation.

The definition of "neglect" will vary from state to state, sometimes in fine nuance, but generally, it can be defined (as it is in one state) as the negligent treatment or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. It involves both acts and omissions on the part of the responsible person. This same state also defines "severe neglect" and "general neglect," (see below) both of which must be reported by mandated reporters.

“Severe neglect” means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to thrive. It also means, among other things, those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, including the *intentional failure* to provide adequate food, shelter, clothing, or *medical care*. “General neglect” means the *negligent failure* of a person having the care or custody of a child to provide adequate food, shelter, clothing, *medical care*, or supervision where no physical injury to the child has occurred.

In this particular state, the child abuse reporting law contains a provision, under the section dealing with neglect, which specifically addresses the questions asked above. The section states that a child receiving treatment by spiritual means or not receiving specified medical treatment for religious reasons, *shall not for that reason alone* be considered a neglected child. The law further specifies that it does not constitute neglect if the treatment of a child solely through spiritual means by prayer is rendered in good faith by a duly accredited practitioner of a recognized church or religious denomination *and* if such treatment is rendered in accordance with the tenets and practices of such church or religious denomination. The statute also says that an informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the minor does not constitute neglect.

How does the child abuse and neglect reporting law in your state define “neglect” and how does the law treat the issues of treatment of a child by spiritual means or a child not receiving medical treatment for religious reasons? Is a report mandated or permitted under such circumstances?