California Orthopaedic Association

Action Plan
Clinical Data in the Era of Value-Based Care:
Rules of the Road for the Orthopaedic Surgeon

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The Importance of Physician Outcome Data

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Action Plan

Clinical Data in the Era of Value-Based Care: Rules of the Road for the Orthopaedic Surgeon

OBJECTIVES

The objectives of this Action Plan are to educate physicians in private and hospital practice settings on the:

- Value of physician outcome data,
- Importance of the data being collected in a transparent manner,
- Management of outcome data, including patient-reported outcome measures (PROMs) data in business relationships and contractual arrangements; and,
- Objectives of the primary entities that are looking to use the data.

BACKGROUND

Healthcare outcome data, specifically PROMs and patient success metrics, have historically been difficult to access and time-consuming to aggregate. Interpretation of these metrics has been further complicated by the often biased and sometimes proprietary nature of the data. Recently, we have seen an increased demand for outcome data primarily due to the rapid move to value-based healthcare as a way of measuring quality care implemented by the Affordable Care Act (ACA) and the Centers for Medicare & Medicaid Services (CMS).

Healthcare payers are actively seeking mechanisms that will allow them to track, report and analyze outcome data across providers and specialties. The payers are not alone in this quest. Newly insured, cost-conscious patients, many of whom have high deductible plans through healthcare exchanges, are making decisions about the care available to them and nudging the landscape towards a more retail-based market. Additionally, health systems, hospitals, and even orthopaedic device companies are looking for trends in outcome data to help guide their long-term strategies around services and new products.

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APPROACH

One of the main assumptions behind the development of healthcare tools used to manage outcome data is that if physicians can access their outcome data in real-time they will gain a unique perspective throughout the course of treatment and make proactive and more informed decisions. This is where transparency to the outcome data plays such a critical role in the transition to a value-based healthcare approach. However, it is not without risk to the physician. Transparency to outcome data from the physician perspective will be perceived as a direct window allowing multiple viewers to surveil delivered quality of care over time and may carry a potential high-impact risk for physicians who are unprepared or unequipped to manage the risk. Navigating the business relationships with facilities and payers alike that are looking to set benchmarks across individual physicians, centers, and hospitals will take an understanding of how the data are to be collected, how they are to be used, and how access is to be controlled and shared.

Just as surgeons need to be fully aware and in control of their environment during surgical procedures, so too should physicians have a say in how their outcome data are propagated. Healthcare providers that cannot or do not proactively manage their practices for optimal outcomes and cost efficiency may easily be highlighted as outliers.

As more emphasis is placed on the healthcare value equation through quality outcomes and as regulations continue to guide the transition away from a volume-based approach, compensation will increasingly be based on metrics reported through outcome data including PROMs. Additionally, reporting tools are rapidly being developed and early adopters will likely have an opportunity to help define what the guideposts of quality care and what outcome data are meaningful in measuring value across an episode of care. As such, orthopaedic surgeons may have a reporting advantage. One view is that orthopaedics has a unique data structure with more predictable clinical presentations, higher patient volumes, and clear outcome measures. This is clearly noted with the CMS bundled payment initiative, Comprehensive Care for Joint Replacement (CJR), as participating hospitals in metropolitan areas are already testing the model. The basis of the plan is to test if collecting the correct data in a transparent and validated manner can help orthopaedic surgeons, surgical centers, hospitals, and payers demonstrate the value they bring to the healthcare system and continue to focus, identify, and understand their primary practice inefficiencies.

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Following is an example of the potential impacts of transparent outcome data on orthopaedic physicians:

An orthopaedic physician has entered into a CJR relationship with a hospital in a large metropolitan area. The contract does not allow control of how or when the physician's outcome data are shared with other entities or how they are used internally.

In this situation, there are two main factors a physician should be prepared to handle.

1. If the hospital does not provide a mechanism for the physician to have regular access to aggregated outcome/PROMs data, or at least be provided with reports at consistent intervals, the physician will have little information regarding the physician's individual value rating as compared to other physicians engaged in CJR at the hospital. This could place the physician at a disadvantage given that the data could be used against the physician in subsequent contracting or economic credentialing decisions and may present the physician with limited ability to demonstrate care value elsewhere.

2. The hospital may be able to provide the data directly to any contracted payer. Consequently, without the ability to review and verify the data prior to distribution, the physician may be unable to manage the perception of the physician's value based on the data if it is incorrect, misused or misinterpreted.

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ACTIONS

Maintaining control of how outcome data are shared and how the data are verified and validated prior to use can help physicians maintain a sense of balanced leverage in negotiations with their contracting parties and healthcare payers. For CJR participating healthcare institutions, this applies to both the quality and cost of care and transparency to these components as they continue to rise in importance.

If you are an orthopaedic surgeon negotiating with your hospital/healthcare system right now regarding bundled payments and assuming and managing risk, you should review the contract for how it deals with each of the issues discussed below.

PLEASE NOTE: The "sample" contract language provisions below are examples of a balanced approach to each issue. The language is not intended to be the starting point in your negotiations with your hospital and/or healthcare system, but is an example of what an acceptable provision might contain. The sample language will not be acceptable in all contracts and in all circumstances. The sample language is not, and should not be considered, legal advice or acceptable in any particular circumstance, or a substitute for knowledgeable legal advice in your particular situation. Legal advice can only be given by an attorney after an appropriate consultation. You must discuss your specific situation and contract with an attorney knowledgeable in health care contracting and cannot simply rely upon the sample language as being appropriate to your specific circumstance.

ISSUE: Orthopaedic Protocols to Demonstrate Quality

POSITION THE CONTRACTING ORTHOPAEDIC SURGEON MAY WANT TO TAKE ON THIS ISSUE:

Clinical protocols (best practices) developed during the relationship remain available to both parties, but cannot be sold by the facility.

Example of sample contract language:
In performing services for patients, Physician may develop and/or utilize specific protocols and procedures (e.g., best practices) in treating patients ("Unique Property"). Unique Property shall include, but not be limited to, any documentation, records, text and other works of authorship, data, databases, information, know-how, conceptions, discoveries, inventions, designs, symbols, names, procedures, methods, processes, improvements, products, prototypes, samples, trade secrets and other property and materials, tangible or intangible, whether or not patentable or registrable under copyright, patent or similar laws conceived, reduced to practice, or

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otherwise created, authored, developed or generated by Physician regarding the treatment of patients, either solely or jointly with [other contracting party], as well as such items that are provided to [other contracting party] by Physician related to the treatment of patients. Physician shall be and remain the sole owner of all Unique Property, and [other contracting party] shall not at any time disclose to others, use, copy or permit to be copied, without Physician's express prior written consent, except pursuant to [other contracting party's] duties hereunder, any Unique Property; provided, however, that [other contracting party] shall have a royalty free non-transferrable license to use Unique Property at its facilities to treat its patients.

ISSUE: Data and Metrics Input

POSITION THE CONTRACTING ORTHOPAEDIC SURGEON MAY WANT TO TAKE ON THIS ISSUE:

Orthopaedic surgeons should have input into deciding which outcome data collection tools, including patient-reported outcome measures (PROMs) data collection tools, are used to collect data and which data metrics are important to measure quality musculoskeletal care. Also, there should be physician input into the metrics to stratify and risk-adjust for co-morbidities and other health considerations (e.g., BMI, smoking, existing range of motion, etc.). While physician participation in the decision-making process can be expected, the ability of the physician to require the hospital/healthcare system to utilize a particular data collection software/ PROMs tool would be unusual.

Example of sample contract language:
Prior to Facility adopting specific outcome measures, including patient-reported outcome measures and the methodology for their collection, Physician shall be presented with Facility's proposed data collection tools, the screening, tracking and presentation interface and given an opportunity to meet and confer with Facility, and comment upon the proposal. Physician comments can include, but not be limited to, the specific outcome measures to be reported and tracked, the presentation of outcome measures and tracked data and the ability to adjust for co-morbidities and other relevant health considerations (e.g., BMI, smoking, existing range of motion). Facility shall also provide Physician the reasonable opportunity to meet and confer with Facility periodically after (1) adoption of specific outcome measures and (2) the methodology for collecting such measures to provide Physician the opportunity to propose modifications to data measures and their collection.

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ISSUE: Data Access

POSITION THE CONTRACTING ORTHOPAEDIC SURGEON MAY WANT TO TAKE ON THIS ISSUE:

1. It should be clear that the orthopaedic surgeon retains access to individual outcome data and has an ability to restrict when any personally identifiable data are released, who has access to the outcome data, and how the data can be used.
2. Hospital should provide periodic reports to the orthopaedic surgeon to allow the surgeon to determine how he/she compares, both in practice and costs, to colleagues in the same subspecialty for the same procedures and to provide an opportunity for the surgeon to correct the data if found to be incorrect.
3. The orthopaedic surgeon should have access to the surgeon's patient records and outcome data if the surgeon no longer has staff privileges at the facility or is no longer affiliated with the healthcare system. This is important as payers/CMS might require metrics on past patients or the records may be needed for the surgeon to be credentialed at another facility/healthcare system.

Examples of sample contract language:

(A) Physician shall at all times have access to Physician's specific outcome measures ("Measures"), and shall be allowed to use and release Physician's Measures as Physician deems fit. Except as required by law, and except for releases to Physician or as requested by Physician in writing, Facility shall not release any Measures that identify Physician or Physician's patients without the Physician's express written consent. Facility may release aggregated de-identified data without Physician consent. Physician shall have and retain the right to use, and obtain copies of, all Measures reported to Physician. Upon written request from Physician, Facility will provide Physician's Measures both individually and in comparison with other Physicians in the Specialty at the Facility. The provisions of this section shall survive termination of this Agreement.

(B) Facility shall provide Measures to Physician within fifteen (15) business days of the end of each [month][quarter] during the Term. The Measures provided to Physician shall identify the Measures of Physician's patients separate from other patients.

(C) If Physician believes that Physician's Measures contain an error, Physician shall notify Facility, and within fifteen (15) days Physician and Facility shall meet and confer regarding the perceived error in order to attempt to agree on the correct Measures of Physician. If Physician and Facility agree that there has been an

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error, Facility shall promptly correct such error and provide the corrected Measures to all those that received the Measures containing the error. The provisions of this section shall survive termination of this Agreement.

CONCLUSIONS:

1. *Physician outcome data and input from their patients will continue to be an important element used by payors/health care systems in evaluating the quality of care rendered by orthopaedic surgeons.*
2. *Increasingly, an orthopaedic surgeon's ability to participate in networks and/or health care systems will be dependent on the surgeon's ability to meet quality metrics.*
3. *If orthopaedic surgeons purposefully or inadvertently give up control over their outcome data, it will be very difficult to regain control of the data.*
4. *Orthopaedic surgeons need outcome data to be able to compare their clinical practice and outcomes to those of their colleagues.*
5. *Orthopaedic surgeons should have a role and be consulted in the selection of the most appropriate quality metrics for their practices.*
6. *The quality metrics must be risk adjusted to take into consideration patient co-morbidities. This will be key to an orthopaedic surgeon's success in alternative payment arrangements.*
7. *Learning how to manage risk and having accurate outcome data will be critical as orthopaedic surgeons enter into contracts with health plans and health care systems or move practice settings.*
8. *Orthopaedic surgeons should retain the ability to develop and/or share clinical practice protocols (best practices) that they develop with their colleagues.*
9. *Facilities should not be able to profit from the surgeon's "Unique Property."*

Approved: COA Board of Directors, November 5, 2016

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