Ask An Attorney

By Margaret E. Somerset, Esq., Underberg & Kessler LLP

Q. How will I compete with Walmart?

A. Walmart's recent announcement that it intends to offer low cost ($65) primary care visits in the convenience of their 10,000 stores with no appointments necessary will present difficult issues for physicians, not the least of which is: "How will I compete with Walmart?" While Walmart's clinics are not yet here, we can expect them to push into New York once they have polished their operational model in other states. The new Nurse Practitioners Modernization Act (NPMA) in New York State also creates the likelihood that Nurse Practitioners will also be opening their own primary and specialty care offices that compete with physicians. This new statute could place Nurse Practitioners (NP)s in competition with physicians for primary and specialty care. By maximizing the use of advanced practice providers, a physician can sustain him- or herself in this newly competitive environment.

Retail medical clinics operated in local pharmacies are not new, but Walmart and CVS plan to expand the concept significantly. Walgreens and CVS have been offering blood pressure testing and immunizations for years, and have more recently added treatment for sinus, ear or upper respiratory infections. These retailers are stepping into a sweet spot of medical care where studies show that retail clinics are popular among young, healthy adults with upper incomes that place a high value on their time. At the retail clinics they are able to seek minor primary care, relatively quickly and without an appointment.

Walmart started its entry to primary care in Texas and South Carolina, where there are high rates of obesity, smoking and other chronic conditions, as well as high numbers of uninsured residents. Walmart expects to expand its clinics to the rest of the country once they have streamlined the model. Walmart also expects to expand the services of on-site clinics beyond those traditionally offered at drug stores. In a partnership with Quad Med, Walmart plans to treat more serious conditions like HIV, diabetes, arthritis and clinical depression.

Until recently, traditional care givers have regarded these clinics as a threat to their business models and have criticized the lack of close supervision and the inability to provide comprehensive, integrated medical care. However, there has been a subtle shift toward recognizing the possibility of partnerships between primary care providers or hospitals and these retail clinics to: (1) refer lower acuity cases to retail clinics to manage the increased demand associated with a higher number of insured patients seeking access through the Affordable Care Act; (2) reduce the risk of re-admissions; (3) reduce the cost of lower acuity services; (4) offer more convenience to their patient base; and (5) access new patient groups within the community.

To remain competitive in this changing environment, primary care physicians can better educate their patients and offer more convenience and reduced costs to their patients through the use of advanced practice providers. For example, to help patients manage their health care costs, physicians can teach them how to reduce their expenses – preventative care; annual check-ups; healthy habits at home; seeking medical attention sooner rather than later for acute problems; and encouraging them to rely upon advanced practice providers when appropriate. To make offices more convenient, physicians should consider offering evening or weekend appointments with advanced practice providers.

A physician may collaborate with NPs in two different ways to expand services to their patients. The first and more traditional collaboration has been the collaborative agreement, where a physician can employ and collaborate with up to four NPs that are not located at the same premises as the physician. The second, more recent, manner of expanding services is through "collaborative relationships" with NPs.[1] [2] [3] A physician may have collaborative agreements with no more than four NPs who are not on the same site as the physician. Presently, the new NPMA does not contain language imposing the same limitation on the number of off-site collaborative relationships that a physician may have.

The services of an NP can be offered at a lower cost per visit and the physician can also offer patients the convenience of alternate locations and hours staffed by NPs. An NP can write orders for medications, diagnostic and laboratory testing, and make referrals to other subspecialists without physician approval. NPs who have been practicing for less than three years and 3,600 hours with whom the physician collaborates must be supervised with periodic reviews of the NPs charting and written collaborative practice agreements are required.[4] For collaborative relationships written guidelines for practice are required.[5] Co-signing a collaborating NPs notes is not required, but is recommended.

Collaboration with a physician's assistant (PA) is also a good way to extend office hours into the evening for the convenience of your patients. PAs are permitted in New York State to perform medical services under the "continuous" supervision of a physician, so long as the duties assigned to the PA are within the scope of practice of the supervising physician. The physician is not required to be physically present at the office when the PA provides the services, but the PA is not permitted to practice independently. The physician must be immediately available at all times to consult on patient matters.[6] No practice agreement is necessary and there is no requirement for periodic chart reviews. Orders for labs and diagnostic testing need not be co-signed by a physician, but orders for prescriptions are different.[7] A PA may not write scripts for certain controlled substances. As with an NP, we recommend that the supervising physician co-sign and date the notes and orders written by the PA.

Continued on page 16

Ask An Attorney

Continued from page 15

Additional Thoughts on Advanced Practice Providers

It is critically important that the supervising physicians have a thorough understanding of the billing requirements for Medicare and Medicaid and private insurance companies as they relate to advanced practice providers. Even though the goal may be to maximize profitability while reducing costs for the patient, the practice also wants to avoid the risk of claims denials or audits.

Supervising and collaborating physicians should also be cognizant of the scope of liability for claims of medical malpractice by their advanced practice providers. Make sure that both the PA and NP carry sufficient coverage and that the physician's carrier is on notice of the use of the advanced practice providers in the practice. The malpractice carrier for the physician may also offer coverage for the advanced practice providers and this should be considered as well.

We recommend that any employment, collaborating or supervising agreements be carefully reviewed by an attorney experienced to practice in that field. As you tell your patients, an ounce of prevention is worth a pound of cure.

References

[1]Effective January, 1, 2015, New York State provided for more independence for NPs with the passage of the Nurse Practitioners Modernization Act (NPMA). Under the terms of this Act, experienced NPs who have more than three years and 3,600 hours of practice experience are no longer required to engage in written collaborative agreements with supervising physicians, but are still required to have written collaborative relationships with a physician or group of physicians or hospital(s).

[2]The collaborative agreement must reflect the NP's acknowledgement that if reasonable efforts to resolve any dispute with the collaborating physician about a patient's care are not successful, the recommendation of the physician will prevail.

[3]A Collaborative Relationships Attestation Form must be filed with the NYS Dept. of Education and must be made available to the patient upon request. The form is available at the NYS Dept. of Education website http://www.op.nysed.gov/prof/nurse/np-npcr.pdf.

[4]A collaborative practice agreement must establish practice protocols which: (1) reflect the current standards of care for the physician and the NP; (2) the scope of supervision; (3) the system for referrals to and consultations with the supervising physician; (4) the method of coverage for each in the event of the absence of either; (5) the method for resolution of disagreements between the collaborators; and (6) sets the periodic review of patient records by the supervising physician, no less than every three months.

[5]A collaborative relationship between an NP and a physician shall include written guidelines for practice that provide for the criteria to be used regarding consultation, including methods and frequency of how consultation shall be provided, and the parameters for collaborative management and referral (including emergency referral plans) which address the health status and risks of patients. The written guidelines for practice shall reflect current accepted medical and nursing practice and shall be filed with the NYS Dept. of Education, along with an attestation by the NP identifying the physician, physicians, or hospital that have agreed to participate in the collaborative relationship pursuant to such written guidelines, within 90 days of the commencement of the practice.

[6]A physician may be available by telephone or in person, or other reliable means.

[7]Prescriptions must be written on the supervising physician's prescription form, be signed by the PA first by printing the name of the supervising physician then printing the name of the PA, and then signing the prescription form followed by the designation "RPA" together with the PA's registration number.