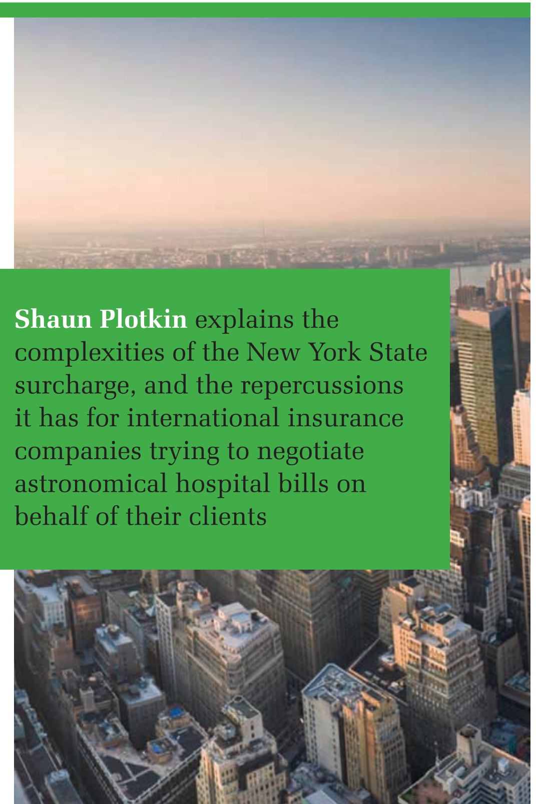

A New York state of mind

Shaun Plotkin explains the complexities of the New York State surcharge, and the repercussions it has for international insurance companies trying to negotiate astronomical hospital bills on behalf of their clients

New York hospitals, and indeed the vast majority of hospitals in the US, are at the epicentre of the same general financial crises and economic meltdown being experienced around the world. In part, this is fueled by the inherent nature of the US healthcare system, with its maze of intricacies and complexities. Hospitals in the US, as is the case in every country, whether private or state run, are, quite simply, 'struggling' to survive. Compounding a multi-factorial problem is the often-underestimated role played by the international medical travel insurance industry, especially so for the high tourist destination states of New York, Florida, California, Arizona, Texas, Nevada, and many others, although to a lesser extent.

Some of the factors for which international payers are being blamed include:

- The use of silent preferred provider organisations (PPOs);
- The questionable practice of using US domestic networks whose contract is between the domestic US network and a given US hospital provider, and whose contract is not intended for use by an outside international insurer;
- Purposely withholding payments until a hospital succumbs to a tendered, ridiculously low reimbursement, and on which the hospital invariably loses money;
- The false portrayal of a claim being denied to coerce an unfair settlement from a medical provider, when the claim is in fact payable;
- Supposedly claiming knowledge of what the hospital's costs are, and then unilaterally by some arbitrary calculation, dictating how much the hospital should be reimbursed;
- The accessing of a US insurer's domestic rates of reimbursement in order to obtain the 'best possible discount', which was also never intended for international patients to access; and
- Transgression of US unfair business practice citations and fraud laws, such as falsely claiming a low policy maximum, or even deceitfully claiming the patient to be deceased.

Claiming the cash back

The above are but a few practices that illustrate how our industry has contributed to the inevitable – that hospitals, through their state governments, and in a number of other enforcing ways, are reclaiming short repayments on bill charges that have been inappropriately taken or withheld.
The State of New York is currently focusing on its state surcharge taxes applicable to medical services rendered in the vast area under its jurisdiction. Other US States – for example, Massachusetts and Minnesota – have followed suit, and these states are seen as the forerunners of a more organised attack against some of the abovementioned practices. As state initiatives move to maximise collections from insurance payers, many more US states are expected to join the example set by New York.
The New York State Department of Health has adopted an aggressive audit process to ascertain whether insurance payers (irrespective of being domestic or international) have accurately paid, or not paid at all, the mandatory New York State Surcharge Tax on medical services. What this translates into for international insurance payers

> The HCRA Legislation stipulates and makes very clear that all insurers, underwriters, TPAs, assistance companies, or any other organisation working on behalf of a primary insurer, has two options to pay the surcharge

is the creation of an environment of financial chaos, especially so if claimed amounts have been paid through the use and instruction of any of the abovementioned conduits.

In addition to the well-documented pitfalls associated with these modalities of bill settlements, almost without exception, and by their very nature, the above named settlement methods all inherently ignore the applicable charges due under the New York State Surcharge Tax Legislation. It is claimed by the New York authorities that every patient's bill emanating from a New York hospital, clinic, surgery centre, or the like, governed by the same Health Care Reform Act of 1996 (HCRA) and its subsequent amendments, will be subjected to an audit, and for which the New York State Department of Health, under the New York State Statute of Limitations Legislation, has up to six years to conduct.

The HCRA Legislation stipulates and makes very clear that all insurers, underwriters, TPAs, assistance companies, or any other organisation working on behalf of a primary insurer, have two options to pay the surcharge:

- Either as an elector who is enrolled and conforms to the stringent requirements of an elector on the New York Electoral Roll, and who is then favoured with a lower surcharge reimbursement rate of 9.63 per cent of the original total billed amount, or,
- As a non-elector, who is then required to submit the surcharge over and above the original billed amount, directly to the hospital, at a much higher rate of 37.90 per cent of billed charges.

The six-year statute of limitation period gives New York hospitals ample time to claw back and reclaim funds on accounts where the surcharges were either not paid at all, or incorrectly paid. Certainly, most international insurance payers with past patronage at a New York hospital will by now have been the recipient of demand letters from that hospital, claiming back any unpaid or recalculated surcharge tax amount. To compound the problem, a discovery of an underpayment of the HCRA surcharge is just the beginning.

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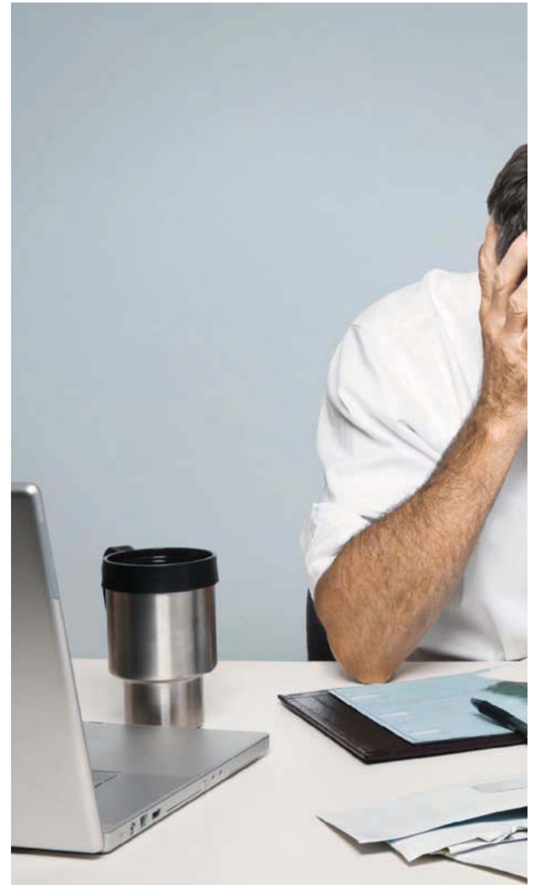
Penalties

If an audit reveals that the payer has paid less than 90 per cent of what should have been paid as the surcharge, then the payer must pay an additional defined interest amount on the difference. If the audit reveals that the payer has paid less than »

70 per cent of what should have been paid as the surcharge, then the payer must pay an additional defined interest rate amount on the difference, plus a superadded additional penalty of five per cent on the difference for each month overdue. In a merciful act of comprehending what this might cause to insurance payers, New York authorities have capped only this latter superadded additional penalty tax at 25 per cent. Given the fact that audits can cover a preceding six-year period, if the State Surcharge Tax is not dealt with in an appropriate manner at the time of settlement, insurers cannot accurately report their underwriting cycles, profit/loss statements can never be accurate, and the combination of the base surcharge tax, together with the interest and penalties owed, will often translate into more than the actual total original billed amount for the medical service that was rendered. Frighteningly, instances of this exact



> Now more than ever, the time has arrived for every insurer's cost containment provider … to be held accountable for their involvement

non-payments or underpayments combined with associated added and superadded penalties will no doubt result in very significant charges being owed. From a cost containment and claims settlement perspective, an insurer or assistance company now has to justify to their principal payer/underwriter that significant funds are owed on a claim that was thought to be paid and closed, as far back as six years ago. Of cardinal impact and totally unaccounted for, is that circumstance are currently permeating and plaguing our industry.

Ultimately, this has to translate into the costs of travel insurance premiums rising substantially in order to offset these additional hitherto unknown liabilities to underwriters of medical travel insurance. The domino effect is of course the impact on a vast stratum of people having limited budgets and means to purchase travel insurance, and indeed now with these added costs, being

When your members are traveling in the U.S....

unable to afford to travel at all.

Now more than ever, the time has arrived for every insurer's cost containment provider (who bears no financial risk in the claims settlement process) to be held accountable for their involvement. This is, after all, the reason that enables cost containment companies to charge an 'access fee' as a percentage of savings off billed charges, and which service should contractually exonerate the ultimate payer (underwriter) from any deferred liabilities.

> Ultimately, this has to translate into the costs of travel insurance premiums rising

If an arm's length, bona fide, full and final bilateral settlement was not reached with the provider of the medical service at the time of settlement, and which included the surcharge tax payment, it becomes only a matter of time that the example set by the State of New York not only exposes an inappropriately taken discount, but also includes vigorous pursuit for the owed state surcharge taxes. ■

Author

Shaun Plotkin holds a bachelor of arts degree from the University of Victoria, a bachelor of laws degree from Monash University, Melbourne, Australia, a graduate diploma of legal practice from the Victorian College of Law, Melbourne, Australia, and is admitted as a barrister and solicitor of the Supreme Court of Victoria, Australia. Shaun is a senior director of Dr Colin Plotkin & Son's Consulting Inc. His portfolio includes adherence to all contractual obligations, all statutes of limitations are complied with, all negotiations are reached reasonably and fairly, and that Dr Colin Plotkin & Sons Consulting Inc. maintains its professional integrity and position as a leader in the cost containment environment.

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