



PHYSICIAN'S GUIDE TO

# PAYER ADVOCACY

(EDX MEDICINE EDITION)



## Preparing for the meeting

**Which insurance companies should I talk to?** Look at your own payer mix and select the major ones.

**Review the payer's EDX policy and any other policies affecting EDX or NM medicine(if exists):** pay attention to language (or absence of) on provider's qualifications, indications for testing, limitations on number of tests, whether needle EMG is required with NCS and supervision requirements for technologists.

- **Note:** AANEM has software that captures any policies that are updated so feel free to contact AANEM policy staff to see if they have copies of the pertinent policies (and the comment letters AANEM may have submitted). Some payers publish their coverage policies (Medicare, most BCBS, Aetna) and they are accessible through their websites. Others will require a request to share a copy. That request can usually be made through provider services. Before requesting copies check with your office staff as they may already have them.
- For database of Medicare LCDs go to: <http://www.cms.gov/medicare-coverage-database/search/advanced-search.aspx> and follow instructions on the page.
- For private insurers, look for parts of their websites dedicated to providers.

**Review AANEM policies, specifically:**

[Recommended Policy for EDX Medicine](#)

[Proper Performance and Interpretation of EDX Studies](#)

[Who's qualified to practice EDX medicine?](#)

[Model Policy for Needle Electromyography and Nerve Conduction Studies](#)

[What Does 'On Site' and 'Real Time' Mean?](#)

[Electrodiagnostic Medicine: Pay for Quality](#)

All of AANEM's position statements can be found here:

<http://aanem.org/Practice/Position-Statements.aspx>

Based on review of payer's existing EDX policy, **identify areas of concern/deficiencies** (for example if the policy does not require both NCS and needle EMG). If there is no policy in place, focus on reasons for adopting one.

**Find out who is the Medical Director for the payer** (again, some payers provide that information on their websites, but most are more clandestine) Keep in mind that for larger payers there may be a local medical director who does not really have an impact on coverage policies; however it is still beneficial to meet with them as they can elevate our concerns to those in charge of policy changes.

- If you are having difficulty finding the medical director and/or contact information, try (1) contacting your **state medical society** or (2) the **insurance commissioner of your state**.

**Research the medical director** (Google/LinkedIn/peer information). Find out what his/her specialty is as this may affect how you prepare for your conversation – i.e., different specialists have different levels of understanding of EDX medicine.

**Request a meeting** with medical director (preferable in person, otherwise teleconference). Please see *Appendix A* for a Template Letter for a written request.

## At the Meeting

Be sure to have **all key AANEM Policies** with you as a reference (if the meeting is in person, you may want to consider taking a second copy for the medical director). You may want to consider preparing **other materials** as well. For example:

- List of AANEM accredited laboratories in your state (you can check for a current list of accredited labs at: <http://aanem.org/Accreditation/Accredited-Labs.aspx> )

- Laboratory Accreditation Brochure: <http://www.aanem.org/getmedia/39f81ce1-78f7-47ef-b009-e0263f0be276/Accred-Brochure>.
- List of ABEM certified providers in your state/area (search engine can be found at: <http://webportal.aanem.org/BuyersGuide/ProfessionalSearch.aspx>)

### **Basic Negotiation Principles:**

- Goals:
  - Meet legitimate interests of each side to the extent possible
  - Resolve interests fairly
  - Durable outcomes/agreements
  - Take community interests into account
- Tips:
  - Focus on the interests, not the positions – avoid having a bottom line
    - *Example: Your position is that you want more money for NCS; the insurance company's position is that they want to save money; mutual interest = high-quality, cost-effective medical care*
  - Deal with the problem on its merits
    - *Example: the people with whom you will be negotiating didn't cause your problem, as they likely didn't set reimbursement rates*
  - Invent options for mutual gain
    - *Example: consider accepting a bundled payment per patient (risk-sharing) or perhaps a yearly fee to cover a certain patient population (ACO-type model)*

### **Anti-trust concerns:**

Please keep in mind that AANEM and its members cannot engage in behavior that could be interpreted as aimed at curtailing competition and therefore violating anti-trust regulations. What it means for physician members talking to payer's representatives is basically this:

1. **Use qualifying words and avoid definitive/absolute statements.** Examples: I *believe* that only properly qualified physicians should be considered eligible to perform EDX testing; It is *my opinion* that EDX testing should be considered the practice of medicine. For example: **Don't say:** Hand-held devices don't work, and you shouldn't pay for it. **Say:** "The AANEM and its members have some concerns regarding the training and knowledge of providers using those devices, and believe the training may not be adequate." (you could also provide them with AANEM technology reviews: <http://www.aanem.org/Practice/Technology-Reviews.aspx>).
2. It is better to frame a discussion in terms of concerns about **patient safety, quality care, and avoiding waste and abuse**, rather than attacking any particular group/profession. Even though in politics negative advertising may sometimes pay off, it is not appropriate in this environment. Focus on promoting AANEM position statements and policies.
3. **Never discuss financials, either your own, or the group you are representing.** The effect that other providers/bad studies have on anyone's bottom line is not relevant to a discussion. If possible, stay away from discussing money other than general remarks about substandard testing increasing overall health care cost. However, patient care and quality should be the focus! AANEM does have a position statement that suggests appropriate reimbursement rates, [Electrodiagnostic Services: Pay for Quality](#), which can be provided to the payer.
4. Please see AANEM's **Guidelines for Antitrust Compliance** attached as *Appendix B*

### **Common Discussion Topics:**

- **Provider qualifications** – discuss what the payer's policy regarding qualifications for EDX medicine is. If the language is there but is vague ("EDX providers should be properly qualified...") encourage adopting AANEM standards (as described in "Who's Qualified" or "Model Policy") to make requirements specific. Ask about enforcement of those standards. How is it monitored (software edits, case review)?

- **Overutilization** – ask the payer if they have analyzed the number of NCS claims submitted by individual providers AND whether or not they have tracked the average number of NCS claims per beneficiary submitted by the provider. Ask if the payer has broken down the averages by provider-type (physician, physical therapist, etc.) or provider qualifications/specialty (i.e., neurology/PMR, internal medicine, etc. Calculate your own average – if it is lower than the payer’s overall average, use that as leverage in your negotiations.
- Discuss the **issues that substandard testing may cause** in general – incorrect diagnosis resulting in either undetected condition or unnecessary procedures (surgeries for CTS, etc.); need to repeat testing if previously performed by an untrained individual. (See the [“Pay for Quality”](#) position statement for specific references, if requested).
- EDX testing as an extension of neuromuscular evaluation – raw data is worthless to an untrained provider. Talk about complexity of the test (cannot be pre-designed as “one fits all”, it is dynamic in nature, needs to be interpreted in real-time – point them to the [“What Does ‘On Site’ and ‘Real Time’ Mean?”](#) position statement). Mention problems that remote reading causes (and also ways to recognize remotely interpreted tests, for example: phrases like “physician on-site” paired with “independent reading” may mean that the interpreting physician was not on-site).
- Should both **EMG and NCS be required for all patients?** Some payers (for example, Aetna) have this requirement; however, there are times when this requirement impacts legitimate providers. On the other hand, it is very helpful in stopping mobile laboratories, performing NCS only. Many providers have language in their policies that it is appropriate for an NCS only when diagnosing Carpal Tunnel Syndrome. They also acknowledge that there are other, rare occasions where it is appropriate to only perform one of the tests, but this should be the exception rather than the rule.
- You may want to consider discussing **what other payers are doing**. For example, a few years ago TrailBlazer decided to require make/model of NCS equipment on every claim.
- **Lab accreditation** – discuss the fact that the program exists and what its advantages and goals are (See the [Laboratory Accreditation Brochure](#) for specifics). Comment on how it will help insurers identify EDX facilities that follow AANEM guidelines (less likely to need to repeat substandard studies, ensures quality of reports, etc.). Encourage insurers to include language in their policies requiring EDX laboratory accreditation by 2017. If they are not receptive to that, some insurers have agreed to put language in requiring all EDX laboratories to adhere to minimum safety standards and the standards promulgated by AANEM. (NOTE: AANEM is currently working on a position statement laying out minimum standards for EDX labs based on the requirements of the accreditation program. It is expected to be completed in Spring 2015 and members will be alerted when it is available at: <http://aanem.org/Practice/Position-Statements.aspx>.) More materials on accreditation are available at: <http://aanem.org/Accreditation.aspx>
  - **Patient Safety** – consider discussing the implications for patient safety. Lab Accreditation provides the best assurance for patient/provider safety as the accreditation process reviews the equipment being used (ensuring they have been properly tested for electrical safety), ensures personnel adhere to best practices to minimize the spread of communicable diseases and are prepared in the case of an emergency, and certifies that the providers performing the study are adequately trained to minimize improper needle placement.

If the medical director has more detailed questions, you can always contact AANEM Policy staff to obtain answers and relay it back to him/her, or simply put him/her in touch with us.

Ask if they need or can think of any type of information, resources, or assistance that AANEM could provide them. Leave AANEM policy staff contact information with them:

Millie Suk, JD, MPP- Health Policy Director  
[msuk@aanem.org](mailto:msuk@aanem.org)  
 (507) 288-0100

Carrie Winter, RHIA – Health Policy Manager  
[cwinter@aanem.org](mailto:cwinter@aanem.org)  
 (507) 288-0100

## Follow-up

Be sure to **follow up** with any additional information that medical director might have requested during the meeting. If you need help obtaining any information or materials, contact AANEM policy staff.

It is a good idea to maintain more permanent connection with medical directors (if possible), either by e-mail or phone. Ask the medical director to contact you if they have any questions in the future. Check with the medical director to see if they would be interested in receiving email updates from you about any new developments in EDX medicine. If any meaningful developments arise, AANEM staff will prepare updates that you can then distribute to medical directors you had contacts with it. You may also choose to volunteer with any committees/boards that oversee quality/coverage policies for the payer. If your schedule permits, consider offering to help the payer eliminate abuse/fraud by volunteering to review some cases for them without charge OR providing their case review staff with some background in EDX testing.

## Conclusion

Keep in mind that the meeting will not always (or more often than not) yield immediate results in form of policy changes, etc. Any changes, even the smallest one, may take months to implement. **DO NOT GET DISCOURAGED!** It is essential to continue any efforts to meet with medical directors and to remind them of EDX testing.

This guide is by no means comprehensive and we hope to update and expand it, using your experiences from meeting with insurance companies. Therefore, please be sure that after every meeting/contact you update us on what happened, what worked, what didn't, and what could be done differently in the future.

**APPENDIX A**

**Template Letter to Payer to Set-up Meeting (on your letterhead)**

[DATE]

[PAYER]

[ATTN: *Medical Director name*]

[MAILING ADDRESS]

[CITY, STATE ZIP]

Dear [NAME/MEDICAL DIRECTOR],

My name is [NAME] and I am a [BOARD-CERTIFIED] [NEUROLOGIST/PHYSICAL MEDICINE AND REHABILITATION PHYSICIAN] practicing at [NAME OF PRACTICE] in [CITY, STATE]. I currently accept patients insured by [PAYER]. On behalf of the American Association of Neuromuscular and Electrodiagnostic Medicine, I am reaching out to you to ensure that your patients are receiving only the highest quality electrodiagnostic testing in a cost-effective manner.

The AANEM is an association dedicated to the advancement of electrodiagnostic medicine. The AANEM is comprised of approximately 4500 neurologists, physical medicine and rehabilitation (PMR) physicians, technologists and other physician collaborators interested in neuromuscular diseases. Our physician members diagnose and treat patients with disorders of the muscle and nerve, such as carpal tunnel syndrome, Guillain-Barre syndrome, Lou Gehrig's disease (ALS), diabetic neuropathy and muscular dystrophy. In order to improve patient care in this practice area, AANEM staff and members frequently meet with payers and develop resources to assist them in the creation of and updates to medical policies related to electrodiagnostic medicine (EDX), such as the performance of nerve conduction studies (NCS). Our goal is promote efficiency and ensure patients receive high quality electrodiagnostic testing.

I would appreciate the opportunity to meet with you and your staff to discuss these issues and to illustrate some of the other ways that I can be of assistance to [PAYER]. Please contact me via phone at [XXX-XXX-XXXX] or via e-mail at: [EMAIL@XXXX.COM] to set up a meeting. I look forward to hearing from you.

Sincerely,

[YOUR NAME]

[MAILING ADDRESS]

[CITY, STATE ZIP]

[PHONE NUMBER/s]

[E-MAIL]

## APPENDIX B AANEM Guidelines for Antitrust Compliance

### *General Statement of Principle*

The American Association of Neuromuscular & Electrodiagnostic Medicine (AANEM) is committed to strict compliance with the nation's antitrust laws. These laws were intended to prevent businesses and professionals from engaging in practices that limit or restrain competition. The penalties for violations of the antitrust laws can be very severe—not only for the AANEM but for its individual members as well.

Members must be alert to the proscriptions of the antitrust laws because physicians can be considered competitors in the context of antitrust challenges even if their practices are not in the same geographic areas or in exactly the same area of medicine. Associations are viewed as groups of competitors that are, according to the U.S. Supreme Court, “rife with opportunities” to violate antitrust laws. The AANEM and its physician members must take special care in association-sponsored meetings and activities to avoid agreements that might be proper in other contexts.

Under antitrust laws, AANEM members cannot come to understandings, make agreements, or otherwise concur on positions or activities that are directed at fixing prices, fees, or reimbursement levels, dividing markets or encouraging boycotts. Members can consult with each other and freely discuss the scientific and clinical aspects of the practice of medicine. By contrast, each member must decide individually, without concurrence of competitors, how to engage in the business aspects of the practice of medicine, i.e., for what price, on what terms, and so forth.

In general, the AANEM and its members should not agree on, and should avoid discussions about:

- Current or future prices or fees, including reimbursement levels, changes in prices or fees, discounting and other terms and conditions of providing services. Except under extremely limited circumstances, agreements on prices or fees are per se illegal. Even mere price discussions by competitors, if followed by parallel decisions on pricing, can lead to antitrust investigations or challenges.
- Allocating areas or patients. Any agreement by competitors to “honor,” “protect,” or “avoid invading” one another's geographic areas, practice specialties, or patient lists would violate the law.
- Refusing to deal with particular providers, suppliers, or third-party payors whose policies or practices members may oppose. Again, mere discussions followed by parallel decision-making could at least trigger close antitrust scrutiny by government or private enforcers.

### *Discussions With Government Entities*

If the AANEM seeks to influence government policy on reimbursement levels, then certain protections from antitrust liability should be available. Organizations such as the AANEM are exempted from the application of the antitrust laws if they are seeking government action, regardless of their intent in seeking the action and regardless of the effect on competition. This exemption is broadly applied unless the effort to influence government action is a “sham” i.e., where the intent was to harm a competitor by the petitioning process itself, rather than through the outcome of the petitioning process. While the extent of this exemption is unclear, its availability should at least be analyzed when determining whether the AANEM should undertake activities related to fees, relative value units, and reimbursement levels in government reimbursement programs such as Medicare or Medicaid.

### *Discussions at AANEM Programs and Meetings*

Discussions of pricing or boycotts as part of AANEM-scheduled programs or at AANEM-sponsored meetings could implicate and involve the association in extensive and expensive antitrust challenges and litigation. In addition, the U.S. Supreme Court has determined that an association can be held liable for statements or actions in antitrust-sensitive areas by volunteer leaders who claim to speak for the association, even if they are not authorized to speak in that area. Directors and officers of the AANEM must make clear whether they are speaking in their official capacity when they address such issues; by contrast, if they are making personal remarks outside of an association setting, the speaker should clearly state that he or she is speaking for him or herself, and not on behalf of AANEM.

The antitrust laws are complicated and often unclear. If any member is concerned about being in a “gray area,” the member should consult with the AANEM. If the conversation among competitors at an AANEM meeting turns to antitrust-sensitive issues, participants should discontinue the conversation until legal advice is obtained or leave the meeting immediately.

### *Specific Guidelines*

- The actual purpose and intent of AANEM policies and programs are important, i.e.; they cannot be aimed at accomplishing anti-competitive objectives.
- Agreements on maximum prices that physicians will charge are just as offensive to the antitrust laws as minimum fee schedules. This is because an agreement on a “maximum” price schedules may also set a minimum price schedule if most competitors charge near or at the maximum fee permitted. In other words, today’s price ceiling may be tomorrow’s price floor.
- The pro-competitiveness of any antitrust-sensitive action should be documented. The focus should be on how the action will lead to increased quality, efficiency, or competition within the health care system.
- Any collection of fee-related data for use in dealing with reimbursers must neither encourage nor facilitate collective pricing or reimbursement demands by members. There should be no agreement among members, expressed or implied, to adhere to the data or to use it in any way. Also, AANEM staff should not be involved in subjectively establishing “consensus” fees or terms based upon interpretations or experience, as well as reported data.
- According to Department of Justice/Federal Trade Commission guidelines, any collection of fee-related data by health care providers should be handled by a third party such as a consultant, accounting firm, or association, and participation by members should be voluntary. The information should be historical only (i.e., at least three months old), not current or projected data. There must be a least five providers reporting data on which each disseminated statistic is based, no individual provider’s data can represent more than 25 percent on a weighted basis of that statistic, and any report based on the information should be sufficiently aggregated so that it would be impossible to attribute the information to specific members.
- The AANEM can collectively provide medical or practice-related data that may improve health care providers’ or payors’ resolution of issues relating to the mode, quality, or efficiency of treatment, provided that the association and its member physicians do not use coercion, threat, or duress to force health care providers or payors to act on the data. As an example, the AANEM could collect information from its members about a particular procedure that the members believe should be covered by payors and then provide the information to payors. As another example, the AANEM could obtain input from its members, then evaluate and suggest ways that other types of health-care providers, such as limited license professionals, can be most effectively utilized.
- Caution should be exercised however, in collecting data on workforce statistics and job market opportunities. While the mere collection of data on such matters is permissible, antitrust concerns may arise if the data becomes the basis for collective action, such as efforts to restrict the number of residency positions in a given specialty.

As with the collection of fee-related data, the Justice Department and FTC have issued guidelines on the antitrust implications of collecting and disseminating statistical data. To comply with these guidelines, all surveys should ensure that: 1) participation in the survey is voluntary; 2) data on prices or other practices must be at least 3 months old; 3) any reports on the survey findings must be sufficiently aggregated so that individual participants cannot be identified; and 4) findings are made available to all survey participants whether or not they are AANEM members or nonmembers.

Physicians can use the AANEM as a forum in which to discuss and arrive at consensus on the scientific or clinical aspects of medicine. For example, they can develop, through the AANEM, suggested practice parameters or standards for patient management intended to assist them in clinical decision-making. However, such standards should follow the guidelines below.

Any membership decisions, credentialing, peer review, standard setting, or ethics enforcement activities of the AANEM should utilize criteria that are objectively reasonable (i.e., based on sound medical or ethical principles), have been



published in advance, and are consistently and impartially applied. The criteria should be no more stringent than necessary to assure that minimum competency or quality levels have been attained. Any such activities must also afford minimum due process to those affected -- notice of the decision, opportunity to address it and right of appeal.

The AANEM should strive to comply with the due process and other requirements of the Health Care Quality Improvement Act of 1986. The AANEM also should avoid adopting ethical standards, practice parameters, or other rules that have the effect of excluding or limiting the economic opportunities of whole classes of specialists or limited license practitioners unless such rules are based on objective medical or scientific principles and are the least restrictive means of protecting the health and safety of patients. Whenever possible, compliance with the AANEM's ethical standards and practice guidelines should be voluntary.

Physicians and the AANEM must not attempt to coerce the decision-making of health-care providers or payors by implying or threatening a boycott if the recommendations of the association are not followed. Any joint statement, policy or program of the AANEM that had the purpose or effect of discouraging members from dealing with particular reimbursers, providers, suppliers or patients would raise serious antitrust risks.

The AANEM's seminars, educational publications, certification program, and other products or activities that are valuable and essential to electrodiagnostic physicians should be made available to both members and nonmembers, although a reasonable price differential may be charged to reflect the fact that the costs of such products or services have been subsidized by member dues.

The AANEM should not require membership in the association as a condition of eligibility for certification by the American Board of Electrodiagnostic Medicine. The tying of AANEM membership to ABEM certification could lead to an antitrust challenge, especially if ABEM certification becomes essential to the practice of electrodiagnostic medicine.

The AANEM should not restrict the rights of its members to advertise truthful, nondeceptive information about the practice, experience, and qualifications. The Federal Trade Commission has repeatedly challenged advertising guidelines that restrict truthful, nondeceptive information.