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What's Negotiable and What Isn't In Managed Care Contracts

Any day now, if it hasn't already, a managed care contract will cross your desk. Whether you're unsure about joining a managed care organization, or whether you've decided the time is right to become a managed care physician, don't sign the contract until you've read and understood everything in it. After you're done reading the contract, ask an attorney experienced in the intricacies and nuances of managed care to review it for you.

Invariably, some provisions in the contract will leave you less than enthusiastic. You may be wondering if you can negotiate a managed care contract. The answer is a resounding yes. The managed care company may not want to change some provisions, but you should always attempt to negotiate those provisions you have any concern about.

Contract provisions that may need to be changed include:

Automatic renewal

This is a standard feature of most managed care contracts. Make certain that renegotiation takes place at least 180 days before the end of the term. This allows you time to review any changes, such as increased memberships, fee changes, or an expanded service area.

Capacity requirements

You may not be able to negotiate this provision, but it's definitely worth trying, or you may be forced to accept unlimited numbers of new patients. Try to include a provision that allows you to say the practice is full to one managed care plan, without requiring the practice to be closed to all managed care plans.

Contract not assignable

Never sign a contract that allows a health plan to assign the physician portion of the agreement to a third party without the physician having the right of prior review and approval of that third party's operations, finances, ownership, etc. This is *absolutely essential*.

Eligibility

Here's another contract provision that's difficult to change, but again, is negotiable. Most plans make it the physician's responsibility to check and verify eligibility every time a member presents for service, and often retain the right to refuse payment or to retroactively take back payments for services if eligibility is not verified.

However, just verifying eligibility does not guarantee payment. Health plans may confirm eligibility, then later determine that the confirmation was in error and withhold or take back payment after services have been delivered. Also, the health plan may conclude that the patient knew when he or she presented that he or she was not eligible and obtained services fraudulently. In this case, it is up to you to bill the patients for services.

Attempt to negotiate a provision that guarantees payment for services rendered in good faith to patients who are later determined to be not eligible, if you follow the proper eligibility verification protocols, and the managed care company gives you incorrect information. Some payers will agree to reimburse physicians who have made a good-faith effort to bill and collect directly from the patient. Usually, two attempts are considered adequate.

Exclusivity

There are two types of exclusivity. In one, the health plan contracts exclusively with a physician or physician group for all members; in the other, the physician agrees to contract exclusively with the health plan and not to service any other managed care memberships. Be very wary of the latter form of exclusivity-tying a practice's survival to a single managed care payer. If you do, insist on being paid a premium for closing your practice to all other managed care plans.

Hold harmless

There are two different sections usually found under this heading. One provision provides that a physician must agree not to bill the member for covered services, other than any applicable co-payments or deductibles.

Under the other type of hold harmless provision, a physician is often asked to hold harmless or indemnify the health plan for certain actions. If such language is not negotiated out, you could be subject to litigation for circumstances and acts beyond your control, such as actions of other physicians that directly affect how you are allowed to manage the case. And, malpractice insurance may not protect you.

Incorporated by reference

Often, the contract will say something similar to "...as set forth in the 'Evidence of Coverage' and incorporated by reference and attached as Exhibit 'X.'" It is vital that you read and understand all referenced documents. These should also be physically attached to the contract before signing it.

On-call availability

The agreement should carefully spell out any on-call responsibilities. Make certain you can meet the requirements or supply adequate coverage. Pay particular attention to coverage requirements when you are not available. The agreement may not allow the physician to choose other physicians unless they also have a contract with the plan.

Finally, make certain you are only responsible to provide services within the service area. This holds true for provisions that discuss out-of-area coverage. Also, make sure you are not financially responsible for out-of-area coverage.

Open-ended provisions

Some managed care contracts contain indefinite wording, such as "from time to time," concerning changing contract provisions. Negotiate out any such language. If the managed care plan insists on it, try to negotiate a favorable, no-penalty "out" clause, allowing quick and simple termination if the health plan implements an unacceptable change. Also, require advance written notice of any proposed changes.

Time of payment

Make certain the contract specifies precise timing for payment and contains a provision that physicians be paid interest on late payments. Be specific about payment dates, and negotiate out any wording that allows the payer an opportunity to withhold or delay payments.

For instance, wording such as "The plan will use its best efforts to pay all claims within 30 days of submission," allows the plan to say that it did use its best efforts and list a variety of excuses, real or imagined, for late payment.

Unilateral contract changes

Some contracts allow the plan to change certain terms or conditions. Don't sign a contract that lets the managed care company change the terms without your prior approval. All changes to the agreement should be mutually agreed upon and signed in writing. If the managed care company will not agree to this provision, you should negotiate the right to immediate withdrawal from the contract if you don't agree with the changes made by the managed care company.

Withholds

This is the amount the payer reserves to cover unexpected expenses. Negotiate with the payer to specify exactly how and under what conditions any such reserves should be distributed. The agreement should also specify if the withholds are the limit of each physician's risk or if the physician can be held responsible for losses in excess of the withhold. If the latter is the case, make sure the contract limits the physicians' financial responsibility.

Wrongful denial of care

This provision is a companion to the hold harmless agreement. You must negotiate out any provisions that shift the liability of wrongful denial of care from the plan to the physician.

Remember, never sign a contract that includes provisions you cannot or will not agree to. Although managed care companies may want you to think contracts are written in stone, negotiation is definitely possible and may be necessary to protect your interests.

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