



FORBES LAW GROUP

# MANAGED CARE CONTRACTING BASICS: UNDERSTANDING THE AGREEMENT

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# OVERVIEW

- Anatomy of a Managed Care Contract
- Key Provisions
  - Term and Termination
  - Compliance
  - Coding and Claims Processing
  - Payment
  - Indemnification, Limitations on Liability
  - Dispute Resolution

# ANATOMY OF A MANAGED CARE CONTRACT

- How is the Agreement structured?
  - Stand-alone agreement
  - Amendment to previous agreement
    - Is one way better than the other? It may depend on your underlying master agreements
- Product Attachments
  - Make sure you are contracting for all products you want/need
  - Can you be added to new products unilaterally?
- Rate Attachments
  - Review rates for each product
  - Can rates change unilaterally?
  - “Lower of billed charges or allowed amount” → are your billed charges lower?
- Regulatory Compliance Attachments
- Conflicting Terms
  - Generally, the addendums/attachments trump the ~~master agreement~~

# KEY PROVISIONS

- Term and Termination
  - Initial Term
    - 1 year? 3 year? 5 year?
    - If terminated during initial term, could you renegotiate right away?
  - Notice Requirements for Termination
    - Look for “for-cause” and “without cause” provisions
    - Payor and provider timeframes for notice of termination
    - Impact on care – do you have to continue seeing patients after termination? For how long? Does it matter if notice was provided?
    - Does termination of one product terminate all products (i.e. if you disagree with a payment change for one product, would you be out for all products with that payor)
- Assignment, Leasing of Contract Terms
  - Understand impact if the agreement was leased to other payors
- Amendments
  - When and how are changes made?
    - Bilateral, through written agreement only
    - Unilateral, with/without notification
      - Will you be notified of material changes?
      - Will you have an opportunity to object?
      - Could you terminate contract if you don't reach an agreement?

# KEY PROVISIONS: CLAIMS AND PAYMENT

- Definition of Clean Claim
  - Alignment with State Law Definition
- Timely Filing: 180 days for original claims, 365 days for corrections
  - Any exceptions? i.e., patient Medicaid eligibility wasn't approved for 6 months, but is retroactive
- Prompt Payment: 30 days of receipt of a clean claim; 1% interest per month. KSA 39-709f
  - Evaluate how your practice could track/report on this data
- Audit Lookback Period
  - How many charts can be reviewed? How frequently?
  - How far back would the payor look during an audit?
  - When/how is statistical sampling and extrapolation used?
  - What are the credentials of the reviewers?

# KEY PROVISIONS: COMPLIANCE TERMS

- OIG Exclusions, Medicare Participation
- To whom do your representations extend?
  - Providers and employees only?
  - Contractors/subcontractors?

# KEY PROVISIONS: COMPLIANCE TERMS

- Indemnification
  - Right to participate and/or defend?
  - Right to agree to/refuse any settlement?
- Limitation on Liability
  - Could negate favorable indemnification provisions, or overall damages
  - i.e. limited to amount paid to provider in last calendar quarter
- Dispute Resolution
  - Mediation Versus Arbitration
    - Mandatory exhaustion of internal appeals?
      - How long do you have to appeal?
      - Independent reviewers are subsequent levels
    - Mandatory mediation before arbitration or lawsuit?
    - Mandatory arbitration?

# LEVERAGING NEGOTIATIONS

- Types of Leverage
  - Geographical distance to access to similar providers
  - Reputation
  - Quality
  - Availability after-hours (i.e. to reduce cost of ER)
- Connect with Representatives
  - Legislature
  - KMS/other professional societies
- Rates
  - Commercial: Have data ready (i.e. only orthopedic provider in 5-county area; quality data, special equipment or services, etc.)
  - Government (Medicare Advantage, Medicaid MCO): May be more limited
  - Consider reviewing newly payable Medicare services each year; determine whether these are included in your contract
  - Any “Most Favored Nations” provisions? Exceptions for Medicaid rates?



# QUESTIONS?

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