



MATT DICKSTEIN

Practice Attorney

Making legal matters easy and economical for your practice

39488 Stevenson Place, Suite 100, Fremont, CA 94539
510-796-9144. matt dickstein@hotmail.com matt dickstein.com

Newsletter, May 2015

How to Negotiate a Managed Care Contract

Managed care contracts are not take-it-or-leave-it deals. A physician practice can and should negotiate its managed care contracts. Read this article to learn how to do it. I focus on three major topics: compensation, exit, and unilateral actions by the payor.

COMPENSATION

Negotiate Rates. Payors usually offer fee schedules represented by 25 arbitrary codes that pay some percentage of Medicare. An arbitrary sampling of codes is irrelevant to you. You should give the payor your top codes, and get written confirmation of the reimbursement for your top codes. Make the payor state the reimbursement rates for the exact services you provide. Then negotiate the rates. Start high and negotiate down: If your break-even rate is 70% of Medicare, start at 120%, and meet someplace over the payor's ordinary rates.

Claims Process. To get paid, you must submit claims to the payor. For this reason, be careful about time cutoffs, including the cutoff for submitting an error-free claim. Try to get 120 days after performing the services. Further, the payor should have a short deadline for payment, and if the payor misses the deadline, you should have the right to suspend services + collect default interest (e.g. 10%) + recover your legal fees incurred in collection of payment.

No Downcoding. Restrict the payor's ability to downcode. The payor should have no ability to arbitrarily adjust claims and pay them at a lower level than submitted.

No Take Backs. Restrict the payor's ability to recoup payments already made to you – so called overpayment recovery, take backs, or the retroactive denial of claims that were previously paid. Put time limits on take backs, e.g. the payor may only recover payments within 12 months after submission of claim. Don't permit the payor to offset its alleged take back against your current or future claims. Instead, force the payor to go through a separate process for adjustment.

No Withholds. Carefully review all "withhold" provisions. A withhold is a percentage or set dollar amount that the payor deducts from your reimbursement; the payor then puts the withhold amount in "risk pools." The payor's reasons for withholding your money always sound official and reasonable, with vague promises of returning your money. You rarely see the money again.

Yes Arbitration. What if the payor doesn't pay you for medical services rendered? If possible, try to get an arbitration provision in the contract, where the arbitration is held in the same geographic area as your practice. This gives you a streamlined, local process to sue for your money.

EXIT

Termination Without Cause. Exit should be priority #1 in every contract. Above all else, I want clients to have a right to terminate the managed care contract, at-will, without cause, on 60 days notice. Circumstances change, and if the contract loses you money, you need to get out. In fact, if you lose on the other negotiation points in this article, you can use an at-will termination right as a blanket fix-all. When things get bad, just get out. For example, if the payor reduces its reimbursement schedule without your consent, terminate the contract.

Calendar the Expiration of the Contract. If you can't get termination without cause, then get a short contract term (e.g. 1 year). Many managed care contracts have an evergreen provision, which provides that the contract will automatically renew at expiration for another term (e.g. another year). This keeps the contract in place going forward. If you want to terminate the contract (and prevent automatic renewal), you must send notice to the payor within a fixed time window before the contract automatically renews (e.g. 90 days before expiration / renewal). Calendar the renewal window so that you don't miss your exit.

UNILATERAL DECISIONS, AND ANCILLARY DOCUMENTS

Beware the provision, buried in the boilerplate, that permits the payor to unilaterally amend the contract. Usually the payor gives itself the right to amend any term of the contract on 30 days notice to the provider. This gives the payor carte blanche rights to do anything it wants, anytime it wants. Your only right is to receive notice of the change. In my opinion, you must either delete this provision, or walk away from the contract. Be ready for hard negotiation on this point.

Likewise, beware all provisions that permit the payor to take unilateral action, in its sole discretion. Never bind yourself to other people's unilateral decisions and actions.

Likewise again, reject all provisions that bind you to the payor's policies and procedures "as they may be established by the Payor from time to time."

Managed care contracts involve lots of documents and policies that you've never seen, and the payor wants all of these documents and policies to bind you, sight unseen. Do not permit the managed care contract to "incorporate by reference" the ancillary documents into the contract. Ancillary documents and policies have surprises, more nasty than delightful. Read every document that comes with the managed care contract.

Call me if you want to talk more.

***Remember, knowledge is knowing a tomato is a fruit. Wisdom is not putting it in a fruit salad.



"Really, I'm fine. It was just a fleeting sense of purpose—I'm sure it will pass."