

“Managing Your Managed Care”

Article 1 in series of 3

Negotiation and Due Diligence

In the business world you don't necessarily get what you deserve. . . . you get what you negotiate! Herb Cohen, author of [You Can Negotiate Anything](#) defines negotiation as a “field of knowledge and endeavor that focuses on gaining favor of people from whom we want things.” Expanding your “field of knowledge” is essential if you want to be successful when negotiating managed care contracts.

How can health care providers increase their “field of knowledge” about payors? One way is to learn as much as possible about the payor or managed care organization (“MCO”). A provider may obtain some of this information directly from the payor. Of course, providers can obtain information from other appropriate sources, such as the state Department of Insurance. However, in developing its “field of knowledge”, a provider should not consult with other competitors to obtain information regarding a payor. This type of dialogue could be deemed illegal collusive behavior. If you are in doubt, consult an attorney with knowledge of state and federal antitrust laws.

A provider who has expanded its “field of knowledge” must use this additional information about a payor to negotiate a better managed care contract. Of course, the provider must first clearly define and prioritize its goals. Only then will the provider be able to make negotiating decisions which further rather than impede its goals.

As in any commercial transaction, the provider should conduct “due diligence” to determine if the proposed transaction or managed care contract will be beneficial. This due diligence process allows providers to access vital information which will enhance a provider's “field of knowledge”. Following are some suggestions on how a provider can create a “field of knowledge” from which to negotiate. Keep in mind that many of these suggestions do not solely apply to new contracts, but may be utilized in contract renewal negotiations as well.

- **BACKGROUND INFORMATION ON THE MANAGED CARE ORGANIZATION**
 - Obtain audited financial statements and an annual report. Look for any changes in key management positions. Look for trends in financial position. Rapid turnover in management can indicate instability.
 - Understand the type(s) of business for which you will be contracting. Some contracts may automatically include not only commercial patients but also Medicare, Medicaid or Workers' Compensation patients. Providers must understand this in order to make informed decisions about whether a contract will work for them.

- Inquire about the physician network in your area. If the network is scarce, is it because the physician reimbursement is not competitive?
- Understand the territory served by the MCO and its future growth plan.
- Understand the MCO's marketing style and the types of employers targeted. If much of the business is ASO/self-funded, the provider should consider the implications of this structure.
- REFERENCE CHECKS - Reference checks provided by a payor or MCO can be a valuable tool in developing a "field of knowledge". Contact other facilities which already have a contract in place. It is preferable that providers require payors to provide reference checks and, if possible, permission to contact these reference checks. A provider should be cautious about discussing payors or MCOs in detail with other providers in the same geographic market. An MCO may allege that this kind of behavior is collusive and anti-competitive which may violate antitrust laws.
- DUE DILIGENCE - In conducting its due diligence, for a new or renewing contract, every provider should seek to find out the following information about the payor in question. This information should be obtained from the MCO or payor to prevent allegations of collusion between providers:
 - Length of time contracted:
 - What is the average age of the payor's contract with other facilities?
 - Billing issues:
 - What are the requirements for data submission on a UB92?
 - How much bad debt is experienced under the plan?
 - Can claims filing be performed electronically?
 - Are identification cards marked with appropriate plan names/logos?
 - Do the EOBs provide all information necessary to identify the patient as a managed care member, to understand how much of the claim is non-covered vs. how much of it is the contractual adjustment?
 - What type of risk exists for silent PPO activity?
 - Do the EOBs clearly identify reasons for denials?
 - Payment history:
 - What is the average payment timeframe?
 - What are the most common reasons for claims being delayed?
 - What is the response of the MCO when facility provides an Aged Trial Balance Report to document payment lags?
 - What are the grievance procedures available to the provider?
 - Denial rate:
 - What types of denials are received?
 - What percent of accounts are denied?
 - How often are denials overturned when appealed?
 - Provider Service:
 - How well do the Provider Relations representatives respond to issues which arise?

Are there any enrollee or provider surveys which indicate the tenor of provider/payor relationships?

- Accuracy of payments:
 - How often are claims paid outside of contractual terms?
 - What is the process for recovering underpayments?
- Medical Record requests:
 - What types of claims require provision of a medical record?
 - How frequently are requests for records made?
- Itemized Bill requests:
 - Are requests routinely made for small dollar claims?
 - Does the facility typically receive multiple requests for these on one account?
- Member complaints:
 - Are members typically satisfied or dissatisfied with plan operations?
- On-site review program:
 - How often do reviewers come on-site?
 - Do reviewers want to visit with your patients/their members while performing the review?
 - Are reviewers compliant with facility's on-site review policy?
 - Do the reviewers communicate well with your UM staff/nurse staff/physicians?
- Services:
 - Can specific services be "carved-out" of the agreement?

To the extent providers cannot obtain the information addressed above from the payor or some other source, then providers should communicate with other providers in a manner which does not violate antitrust restriction on collusive or anti-competitive actions. Examples of these types of steps include:

1. Communicating with other providers about payors who are not located in the same geographic market.
 2. Do not reveal any confidential information about payors.
 3. Providing education forums on managed care issues which do not identify specific payors. This can be done via the Hospital Association or other trade associations.
- **CONTRACT REVIEW**
 - Internal Review:
 - Acknowledge the internal managers whose departments are responsible for administering these contracts. This opens barriers between departments and identifies areas where the proposed contract may require workflow design or specific types of reporting necessary

for contract compliance. By including other managers in the contract review process prior to execution of the a new or renewing agreement, the provider can also identify areas of the contract where there could be varying interpretations of terms and have the opportunity to clarify those for your staff to prevent disputes after the agreement has been signed. It may be helpful to include such areas as Patient Financial Services, Admitting/Registration, and Collaborative Patient Care Management in reviewing the contract. This kind of team effort will result in an involved staff which has a better understanding of and commitment to its implementation.

- Continuously maintain a contract checklist to maintain a focus on the elements you would like to negotiate in any new contracts or upcoming renewals. We all have lists that we probably started several years ago but we all learn from past contracting not to mention the fact that our industry is ever-changing, and we need to negotiate our contracts to take new trends into account.
- Ensure you have copies of all materials referenced in the contract. None of us like surprises.

- External Review:

Another method which providers can use to increase their ability to negotiate successfully is to use professional advisors, such as attorneys, accountants, and consultants, in the contract review process. While it may not be necessary for these external advisors to review every contract for a provider, providers should seek outside counsel when they are uncertain as to the meaning or potential impact of certain contractual language or if new issues arise. External advisors will usually be able to provide useful advice because they have previously encountered such an issue or because of their specialized training. Using external consultants in an organized fashion during the negotiation process will hopefully prevent having to use these consultants to resolve a dispute after a contract has been signed. This is desirable because it is much more expensive and time-consuming to resolve contract disputes than to effectively negotiate a contract.

- RATE ANALYSIS

- What rates are equitable for the book of business at hand?
- What rates are equitable considering the administrative requirements of the plan?
- What rates will bring an acceptable level of profit under the contract?
- What type of clinical team involvement will be necessary to manage the patients specific to this contract under the negotiated rates?

- OTHER SOURCES OF INFORMATION

- The North Carolina Department of Insurance retains a great deal of information about payors. This information is a very valuable tool in negotiating managed care contracts, and, since this information is largely public information, there is

little risk of violating antitrust laws. The second article of this series will focus on exactly what is available and how to use it.

- The North Carolina Department of Insurance publishes a Managed Care Plan Handbook which is designed to assist the public in selecting a health plan and provides summary information related to plan disenrollment, physician turnover, member appeals, and member grievances.

Contract negotiation can sometimes be an arduous task. Remember that knowledge, however, can be a powerful negotiating tool which might make the process a little easier and a lot more effective.