

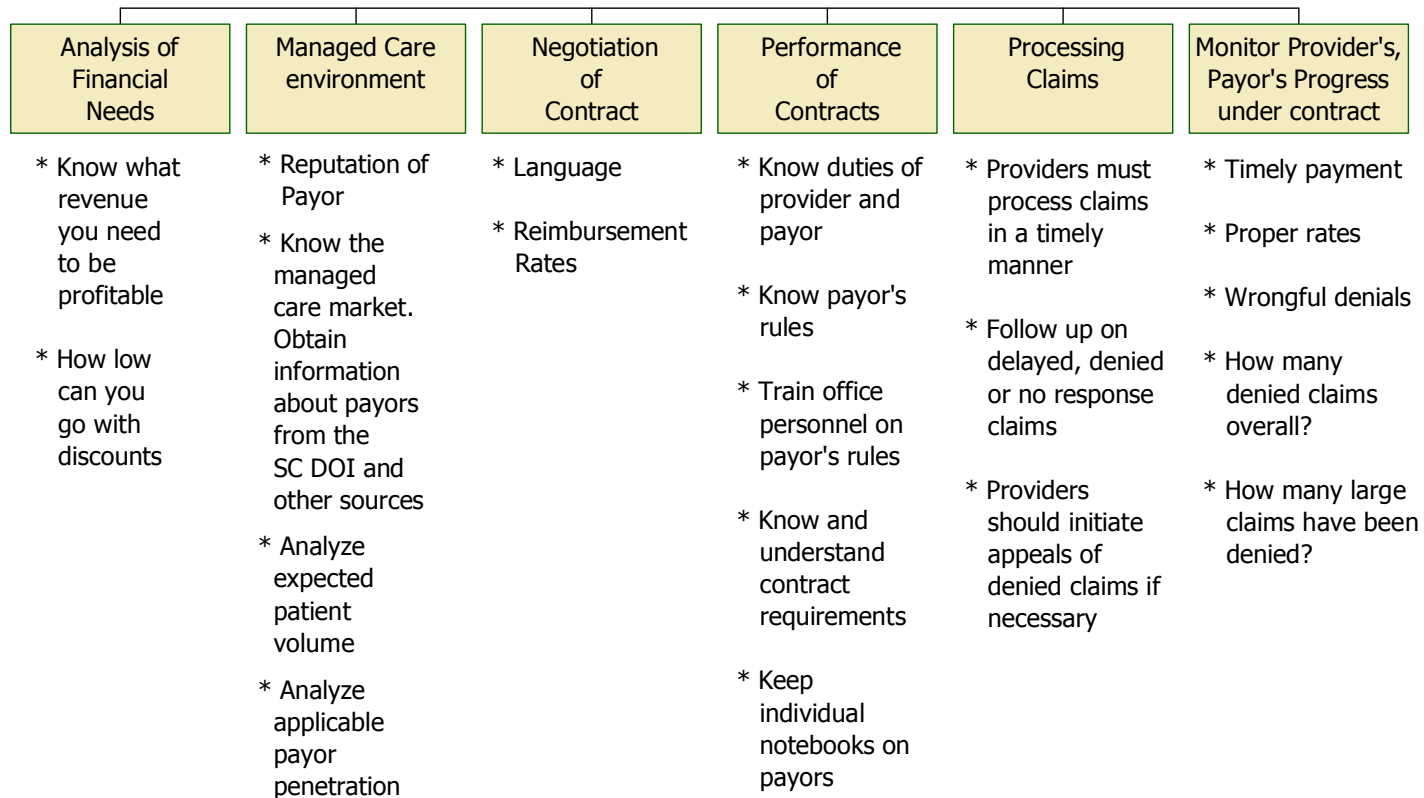


NEGOTIATING MANAGED CARE AGREEMENTS

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SPECTRUM OF MANAGED CARE CONTRACTING AND PATIENT ACCOUNTING



● What is the Foundation of the Provider/Payor Relationship?

🚀 **Payor's Duties:** Provide patients

🚀 **Provider's Duties:** Treat patients and submit claims

🚀 **Payor's Duties:** Pay claims

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Negotiating Managed Care Reimbursement



Due Diligence

- ✚ What are you getting paid currently?
- ✚ Know your volume for each CPT code.
- ✚ Review the Administrative Manual for each contracted managed care company.
- ✚ Understand the managed care market.
- ✚ Become familiar with the plan design for the major Groups in your market. Significant financial steerage should be built into every Managed Care Plan.



Pricing Strategy

✦ Negotiate acceptable reimbursement methodology.

– Capitation

– Fee-For-Service

- Medicare-Based Schedule
- Standard Fee Schedule
- CPT Carve-Outs
- Percent-of-Billed Charges



Pricing Strategy (Continued)

- ✦ Challenge payors' bundling edits.
- ✦ Eliminate 'lessor of' clause.
- ✦ Negotiate annual inflationary increases to fee-schedules.
- ✦ Eliminate unilateral rate amendment opportunities for payors.
- ✦ Identify rate outliers for your high volume CPT codes and make those a priority for negotiations.
- ✦ To the extent financially feasible, eliminate significant discrepancies among negotiated fee schedules.



Auditing Managed Care Reimbursement

- ✦ Include complete fee-schedule as a part of the Agreement.
- ✦ Make sure new rates are loaded into the claims processing system by the payor on the effective date of the new rates.
- ✦ Confirm that your billed charges for each CPT code are at least as high as your highest reimbursement for each CPT code.

● Auditing Managed Care Reimbursement (continued)

- ✦ Audit payments for contract compliance.
- ✦ Implement a denial management program.
- ✦ Investigate managed care discounts applied to non-managed care accounts.

● Negotiating the Language of a Provider Contract is Equally as Important as Negotiating Reimbursement Methodology

- ✦ Failure to successfully negotiate contract language can effectively reduce a negotiated discount to a much deeper discount
- ✦ Be aware of seemingly innocent language
- ✦ Ask questions of payors about meaning of language. Document answers
- ✦ All terms can be negotiated. Even if you are not successful in negotiating alternative language, the negotiating process will alert you to the potential effect of the payor's language

Contract Issues Directly Related to Payment

- ✚ Payor's obligation to pay claims
- ✚ Definition of clean claim
- ✚ When are payments due
- ✚ Penalties for late payment of claims
- ✚ Utilization review



Payor's Obligation to Pay Claims

- ✦ Make sure that every provider agreement contains a clear obligation on payor to pay provider's claims



Definition of Clean Claim

- ✦ Goal of Defining Clean Claim: Start the clock running on payor's time period to pay
- ✦ Final HIPAA regulations which standardize electronic transactions may help in creating a standard definition of a clean claim

Definition of Clean Claim

- ✚ The following is an example of a definition of Clean Claim:
 - ❖ Clean Claim means (i) a claim that is submitted on a UB92 or HCFA 1500 Form (or its successors) and contains the following information: patient name, patient's date of birth, member identification number, [provider's] name, address and Tax I.D. Number, date(s) of service or purchase, diagnosis narrative or ICD-9 Code, procedure narrative or CPT-4 Code, services and supplies provided, physician's name and license number, provider's charges and such other information that may be mutually agreed upon by the parties; or (ii) such other definition that may be adopted by the South Carolina Department of Insurance or applicable federal legislation.

- ✚ Providers should also consider language that states that claims are presumed clean unless a payor objects within a certain number of days



When Are Payments Due?

- ✦ A claim should be paid within a reasonable time period after the date the clean claim is submitted to payor
- ✦ If there is a dispute regarding a certain claim, provider may require that payor automatically pay a certain percentage of the disputed claim and the remaining portion will be unpaid until dispute is resolved. This provision provides additional incentive for payor to resolve disputes over claims

Example Language:

- ✦ Compensation to [Provider]. Payor shall pay [Provider] for Covered Services provided to members in accordance with the applicable reimbursement rates attached hereto as Exhibit A. HMO shall process and pay all Clean Claims for Covered Services submitted by [Provider] within thirty (30) calendar days after Payor receives (including receipt of a Clean Claim by electronic transmission) a Clean Claim with the information set forth in Section X. If Payor determines that a bill is not a Clean Claim, Payor shall, within fifteen (15) business days of receipt of a claim for Covered Services, notify the [Provider] of the specific additional information needed and pay the Clean Claim within thirty (30) days of resubmission of the claim with the required information by [Provider]. If Payor does not notify [Provider] within the fifteen (15) business day period that additional information is needed, the claim will be presumed to be clean and complete. [Provider] may appeal claims decisions, as described in Exhibit B and present its case on any claim determined to be eligible for payment as submitted prior to final denial. Each payment to [Provider] shall include an explanation of payment that will itemize the payment and the service(s) rendered.

Penalties

- ✦ S.C. – No prompt pay law
- ✦ In every managed care agreement the negotiated reimbursement rate presumes prompt payment. Consequently, if prompt payment does not occur then a penalty may be imposed
- ✦ Penalty provisions are necessary to ensure payors' compliance with obligation to pay in a timely manner
- ✦ Providers should also consider negotiation of penalties for payors' other breaches of the provider agreement
- ✦ Providers should be aware of hidden penalties within the provider agreement which are aimed at providers. These often result in underpayments of denials by payor
 - Be careful of offset language

Example Language:

✦ Interest Charges for Late Payment

- All late claims payments (defined as Clean Claims not paid within 30 days) shall accrue interest at the per annum rate of 18% beginning on the date the Clean Claim was submitted to Payor

✦ Full Charges

- If payment is not received by [Provider] within the thirty (30) day period, Payor shall be obligated to pay [Provider] for the Covered Services rendered at [Provider's] billed charges and [Provider] may, in addition, elect to terminate this Agreement pursuant to Section X of this Agreement.



Utilization Review

- ✦ Utilization review should be used by payors as a means of monitoring the appropriate level of care, not as a means of delaying or denying payment which is due or carving out covered services through creation of “specialty networks”



Utilization Review

Providers should:

- ✦ Require payor to establish clear guidelines regarding utilization review mechanics. Providers should review these guidelines prior to execution of the agreement
- ✦ Never allow payors to have right to unilaterally modify UR guidelines and policies by payor
- ✦ Negotiate meaningful appeal process for utilization review decisions
- ✦ Negotiate the ability to initiate and maintain appeals on behalf of members
- ✦ Eliminate provider's responsibilities for payor's mistakes regarding coverage and eligibility decisions



Know the Applicable Laws

- ✦ South Carolina law dealing with utilization review:
 - S.C. Code §38-71-1910, et. seq. Health Carrier External Review Act
 - S.C. Code §38-71-1940 Right to Request an External Review
- ✦ Providers should know these laws in order to use them against payors when negotiating provider agreements and when payors cross the line
- ✦ Providers should lobby for additional utilization review legislation which penalizes wrongful denials and other improper behavior by payors

● Other Contract Areas Which May Be Harmful to Providers

- ✦ Limitations on Liability
- ✦ Indemnification / Hold Harmless – Risk Shifting Language
- ✦ Confidentiality Provisions
- ✦ Modification of Agreements and Related Documents
- ✦ Carve-outs
(A Misuse of Utilization Review)

Limitations on Liability

- ✚ Providers should not waive rights to seek punitive or special damages based on payor's conduct
- ✚ Providers should not agree to limit or cap a payor's potential damages in advance
- ✚ Providers should retain all current and future rights in resolving potential disputes with payor
- ✚ Providers should not waive right to jury trials or agree to unhelpful forums of jurisdiction. Be wary of arbitration provisions

Indemnification / Hold Harmless Issues

- ✖ Providers should be careful about indemnifying a payor for payor's actions or for actions controlled by payor
 - S.C. Code §38-71-1740 makes this kind of indemnification provision illegal
- ✖ Providers should never hold payor harmless for any alleged breaches of the provider agreement by payor
- ✖ Providers should be aware that "hold harmless" language regarding the balance billing of enrollees only applies to HMO products
- ✖ Be aware of payor's use of "risk-shifting" language



Confidentiality Provisions

- ✦ In light of the HIPAA imposed Privacy Rules, providers should be careful about agreeing to indemnify payors regarding misuse of confidential patient information
- ✦ The stakes have been raised because of HIPAA and providers should be wary of new language proposed by payors which shifts the risk of HIPPA violations to providers
- ✦ Providers should not assume any more potential liability than is absolutely required in regards to confidentiality issues



Confidentiality Provisions

- ✦ It is appropriate for parties to enter into mutual confidentiality provisions
- ✦ However, providers should be wary of one-sided confidentiality provisions which restrict providers' ability to discuss issues related to the contract with enrollees, employers, or other members of the community
- ✦ Unilateral confidentiality provisions can have a negative effect on provider's ability to negotiate a new agreement

Termination Issues

- ✦ Providers should understand the different scenarios in which the provider agreement may be terminated
 - When negotiating a contract, providers should contemplate how this contractual relationship may end
- ✦ Providers should make sure that there is a method for terminating the relationship whether for cause or without cause
 - ❖ For Cause termination should specifically include failure to pay claims in a timely manner, although intermediate sanctions could also be used so that timely payment is not an “all or nothing” issue
- ✦ Providers should also be aware of their obligations to provide care after termination of the agreement

Modification of Agreement and Related Documents

- ✦ Providers should not agree to provisions which allow payors the unilateral right to change the agreement or documents related to the agreement (i.e., utilization review policies or reimbursement rates) without the provider's consent
- ✦ All modifications, amendments, or alterations to an agreement or to documents referenced in the provider agreement should require the consent of all parties to the agreement



Carve-Outs

- ✦ Providers should make sure that the provider agreement indicates that the definition of Covered Services includes all services provided by the provider
- ✦ Providers should control adjustment or delegation of duties by payors
- ✦ This prevents payors from cherry picking services and entering into exclusive arrangements with other providers who are willing to accept lower reimbursement



Other Contracting Tips

- ✦ Negotiate timely claim filing terms of the contract
- ✦ Eliminate payors' ability to offset future payments to providers as a means to recoup money
- ✦ Make sure contract allows at least a year from the date of payment to challenge the accuracy of the payment
- ✦ Confirm in the Agreements that discounted rates apply only to covered services for true managed care plans
- ✦ Eliminate payors' ability to come on-site and audit billing and financial records
- ✦ Eliminate payors' ability to penalize you for referrals to out-of-network providers



Top Ten Danger Areas in Provider Agreements

1. Payor's obligation to pay provider for services in a timely manner
2. Ability of payor to unilaterally amend the agreement or related documents
3. Hidden penalty language which keeps providers from being paid
4. Improper or unfair utilization review language and rules
5. Language which limits or eliminates payor's potential liability for its actions
6. Indemnification and risk-shifting language which benefits payors
7. Termination provisions
8. One-sided confidentiality provisions and improper commercial gag clauses
9. Provider being penalized for payor's mistakes regarding coverage or enrollee eligibility
10. Language which allows payor to carve-out services