

Understanding the Negotiation of Managed Health Care Contracts

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To the dismay of the majority of physicians today, both the practice of medicine and the “Business” of medicine have become so intertwined that it has become impossible to differentiate the two. Unfortunately, those physicians who either choose to resist this trend, or worse, ignore it altogether, all too often find themselves mired in unfavorable contractual relationships which, in turn can lead to lower revenue to the practice. While physicians understandably wish to focus on the treatment of their patients, it is now essential that they understand the importance of properly handling the business of medicine as well.

One such aspect of the business of medicine that physicians often ignore is the negotiation of managed health care contracts. Unfortunately, most physicians do not know that these contracts are negotiable. Accordingly, these physicians enter into such agreements without even reading its terms and, satisfied with just the mere prospect of treating the respective health plan’s insured’s, store the agreement away never to be seen or found again. The provisions of a managed health care contract are just as important as the respective insurance carrier’s fee schedule, and again, are negotiable. The purpose of this article is to quickly highlight a few concepts to consider in negotiating a managed health care contract.

Indemnification or “Hold Harmless” Provision

When a health plan offers a contract to a physician, its terms will be unfairly and predictably favorable to the carrier. One such example of a “one-sided” term is the indemnification or “hold harmless” provision of the contract. An indemnification provision essentially protects one party to a contract from any liability arising from the actions or omissions of the other party to the contract in performing its obligations therein. Often, a proposed contract will provide this protection only for the health plan. Therefore, it is important that the indemnification provision be modified so as to provide mutual protection against the respective liabilities arising out of actions or omissions of both parties – essentially forcing both parties to handle their own liabilities.

Termination Without Cause

As in any agreement that a physician may enter into, it is essential that there exist an “exit strategy” whereby the contract can be terminated *for any reason*. As the contract will likely contain terms that may change according to factors outside the physicians’ control, it is necessary that the physician be able to terminate the contract if those changes cause

its terms to become onerous or result in the practice losing money. This is of particular importance if the health plan, pursuant to the provisions of the contract, chooses to reduce the amount of reimbursement for a particular service under its fee schedule. Thus, if this reduction in fee reimbursement causes the contractual relationship to become untenable, it is essential for the physician to have the ability to terminate it.

Evergreen Provision

Similarly, it is important for the physician to be able to re-negotiate the terms of a contract over time, while at the same ensuring it remains in effect without interruption. This can be established by insisting that an “evergreen provision” be added to the contract. An evergreen provision provides that the contract (and its present terms) will automatically renew at a set time interval – usually every year. While this provides the physician with the peace of mind that the contractual relationship will carry on without interruption, it also provides a mechanism whereby the physician can force re-negotiation of certain provisions of the contract in anticipation of the renewal. This ability to re-negotiate is essential as it allows the physician to avoid “being stuck” with unfavorable terms for an untenable period of time.

Claims-Based Provisions

At the heart of a managed health care contract are the provisions setting forth the obligations of both parties when it comes to the actual submission of claims and the subsequent payment thereof. It is in the best interests of the physician that the contract provide for both a clear and efficient methodology for the submission of claims and the prompt payment of those claims by the health plan. Therefore, it is essential that the physician take great care to review these “claims-based” provisions to ensure the cost-effectiveness of the contract to the practice. To that end, the physician is encouraged to pay particular attention to the following:

- the amount of days a physician has to submit a claim after performing a particular service;
- the documentation a physician must submit with a claim;
- the amount of days a health plan has to remit payment upon receipt of a claim;
- the amount of interest, if any, the health plan will pay if remittance of payments are late; and
- the amount of time the health plan has to institute overpayment procedures.

Conclusion

Even in this brief discussion, it should be apparent to the physician that, when it comes to the business of medicine, complacency will only serve to the detriment of the practice. In entering into agreements with managed health care plans, physicians are well-advised to carefully review its terms and provisions, negotiate with the health plan. If you should have any questions with regard to the review and negotiation of health care plan contracts, please contact Mathew J. Levy, Esq. at (800) 445-0954.