

Guidelines for Physician Review of Health Plan Contracts

Some health plans would have you believe that all terms and conditions in health plan contracts are immutable. That is not true. Health plan contract language can and should be negotiated under some circumstances. All physicians are strongly cautioned against blindly signing health plan contracts or any “paper work” that comes across your desk concerning rates, charges, reimbursement or network participation on the assumption that you have no choice. MAG encourages its member physicians to be vigilant about establishing an organized contracting methodology that will identify contract issues that may warrant concern and discussion with a health plan representative about possible language changes. There is strength in numbers: the more physicians proactive about negotiating health plan contract provisions, the more effective all physicians will be in contracting with payers.

The contracting guidelines below are recommended to physicians and their office administrators as a starting point for establishing effective contracting protocol for medical practices. Where you have particular concerns about the potential effect of contract language, there is no substitute for obtaining legal advice.

1. Reject the premise that health plan contracts are non-negotiable.

You can negotiate health plan contract language. If you assume all health plan contract language is a take-it-or-leave-it proposition, you will necessarily be unable to determine what particular provisions a health plan might be willing to negotiate with you.

2. Develop and follow a specific office contracting protocol.

Readiness is the first step to good contracting practices. Set up, then faithfully use, a plan for your office, to include the following elements:

- appoint a trusted, long-term employee to be responsible for contracting
- systematically collect, organize and store all health plan contracts and all correspondence and notices from the health plans
- carefully read every contract (or, at a minimum, have your appointed employee do so) against the Contract Review Checklist below, and list any questions or issues of concern
- monitor all contracts -- most are evergreen and will automatically renew unless one party terminates or proposes modification

- know when contracts expire, calendar expiration dates and deadlines for giving any required notice of cancellation

3. **Establish strong rapport with a health plan representative.**

You will accomplish much more if you are dealing with an individual you know and with whom you have good rapport. Good practices to develop rapport with health plan representatives include the following:

- have face to face meetings with the representative when possible
- be prepared for all meetings with the representative
- remember that you are negotiating a relationship not a transaction
- as much as possible, channel contact with a health care plan through one person in your office and one with the health plan
- train the health plan representative to believe that you are reasonable (by, for example, periodically making small language proposals)
- differentiate your practice – the health plan needs to want your participation
- demonstrate that you do things professionally

4. **Realistically assess your ability to negotiate a provision.**

Various factors influence whether and to what extent a health plan will negotiate particular contract provisions. Before you raise an issue with a health plan, assess your negotiating position.

- What is the value of the contract to your practice?
- What percentage of your business does the health plan represent?
- Do the fees cover your true cost of doing business?
- Are the health plan's administrative requirements realistic?
- Does the health plan steer patients to you?
- What is the impact of dropping a plan on referrals – do you need to stay in plan because referring doctors will also refer patients from good plans?
- What are the strengths of your practice that might make you more attractive to the health plan?
- Do you add value to the health plan's network (e.g., you are the only specialist within so many miles).

5. **Determine specifically what you want to obtain.**

Concerning any potentially problematic health plan provisions that you want to address with a health plan, determine in advance terms language that would be

ideal for you, what would be minimally acceptable to you, and an alternative plan if you cannot negotiate something acceptable.

Although in negotiating a contract, you may not always obtain terms and conditions or language that are the ideal, having a framework in mind for what would be ideal – a target – is important in contract negotiations.

6. **Apply a contract review checklist when you review health plan contracts.** Develop a written contract review template or “checklist” that you, or your designated office personnel, can utilize to identify contract provisions that warrant possible negotiation. While there may be no one-size-fits-all template, the checklist below can be used to develop an individualized template that will work for your practice.

Contract Review Checklist

An ideal contract would:

_____ not use imprecise language subject to differing subjective interpretations (e.g. “commercially reasonable” or “clinically appropriate” can mean different things).

_____ clearly identify all parties to the contract.

Some contracts will use a broadly defined term like “affiliates” and allude to a list of included entities that is “available.” Ask for the list and keep it with your contract.

_____ clearly specify the contract duration and provide reasonable terms for termination.

Carefully read all provisions related to termination, notice, amendment and rejection. Is the contract “ever green” (renews automatically absent specific action by a party) and, if so, is the manner by which a party may terminate the contract clear and definite? Be aware that, typically, health plan contracts are written to perpetuate physician inclusion in the insurer’s network by obligating the physician to “uninterrupted” renewal absent some specified affirmative action.

_____ provide that neither party can unilaterally amend the contract, any related documents, or the fee schedule or terminate the contract without cause (defined in a manner that is fair to both parties).

_____ provide that after termination of the contract and until the health plan has made medically appropriate referrals of patients who continue to need your services, including special circumstances patients (as defined by HMO and PPO laws), the health plan shall pay your standard fees for services that you render to such patients.

_____ require payment of fees within a specified number of days and meaningful incentives for the health plan’s compliance with this requirement.

_____ allow a specific, reasonable time to submit completed bills and a reasonable standard for claims submission after the designated time when extra time is required due to circumstances beyond your control.

_____ specifically state all claim format and submission requirements rather than vague or open-ended standards prone to differing interpretations (such as, “in a form acceptable to the Plan”).

- _____ allow you to bill patients (unless prohibited by law): (a) when the health plan or payer fails or is unable to pay or, (b) for services not covered by the health plan and (c) when you have advised the patient that the health plan or payer has determined that proposed services are not medically necessary.
- _____ require the health plan to pay you for services rendered pursuant to a mistaken verification if the mistake did not result from your failure to follow the verification procedures provided by the health plan.
- _____ provide detailed descriptions of the health plan's utilization review, quality assurance, dispute resolution protocols and all other documents relating to your health plan contract and the protocols are fair and provide you with meaningful appeal mechanisms, including access to an independent review organization for medical necessity determinations.
- _____ specify the amount and type of insurance covering the health plan's activities under the contract and provides that you will be covered as an additional insured.
- _____ not require that you indemnify and hold harmless any other party or agree to be "solely responsible" for any harm to covered patients.
- _____ not require waiver of right to collect payment from a patient even where the insurer improperly refuses to pay a claim.
- _____ not contain provisions that require you to significantly alter your practice (for example, with respect to your availability, referral practices, or staffing) or alter the standard of care to which you are held.
- _____ provide for payment for emergency care services notwithstanding any pre-authorization requirements and define emergency care in accordance with the understanding of a prudent layperson.
- _____ contemplate capitation, risk sharing or withhold arrangements, and provide descriptions of such arrangements that are sufficiently clear and detailed to allow you to fully evaluate the risks that you are accepting.
- _____ not require you to obtain more insurance coverage or different types of insurance than your current insurance.

- _____ not impose unfair limitations on your access to formal dispute resolution (by the courts or arbitration) should you have a legitimate dispute with the health plan (e.g., onerous conditions precedent to formal proceedings).
- _____ not contain limits on the health plan's liability for breaches the contract.
- _____ provide adequate legal protection and reasonable compensation for any non-medical services the contract requires you to perform (e.g. peer review committee).
- _____ not not provide that you must accept the discounted rate as paying in full from any payer (which is intended to permit "selling" or "renting" the negotiated discount).

Health Plan Contract Review

To assist MAG members in addressing health plan contracting issues, Kevin S. Little, J.D. will offer a specially priced one hour consultation of \$250.00 to review health plan contract provisions about which you have concerns or questions, whether in a new or existing contract. To schedule your consultation, contact Mr. Little at (404) 921-4040 or kevin@ksllawfirm.com.