



# What to Expect When Contracting with MCOs

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# Disclaimer

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# General Provisions

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- Definitions (non-exhaustive)
  - Clean claim
  - Covered services
  - Medical necessity
  - Payor / plan sponsor
  - Member / enrollee / beneficiary
  - Affiliate
  - Products
  - Effective date

# General Provisions

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- Relationship of parties
  - Independent contractors
  - Which provider facilities included in contract
- Scope of agreement
  - Supersedes other or prior agreements between the parties
- Entire agreement
  - Exclude provider manuals, etc.
- Non-exclusive

# General Provisions

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- Amendment: mutual, written consent
  - Could have different process for material v. non-material
  - **KEY:** What is “material”?
- Use of parties’ names and marks
- Third party beneficiaries
- Dispute resolution
  - Informal, then mediation, arbitration upon mutual agreement
  - Allowed to seek injunctive relief in court
- Assignment and delegation: mutual

# General Provisions

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- Term and termination
  - Initial term at least one year
  - Automatic renewal unless 90 days notice prior to end of term
  - Distinguish non-renewal and termination
  - 90 days notice for termination without cause
  - Material breach
    - Opportunity to cure, then 30 days notice
  - Clearly defined continuing care period
    - 90 days or state law
    - Applicability of contracted rates following termination
    - Might also apply to plan/payor insolvency

# General Provisions

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- Liability insurance: coverage and indemnification should be mutual
- Severability
- Governing law
- HIPAA Business Associate Agreement
- Notices
  - Form
  - Individual and address

# General Provisions

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- Confidentiality
  - Payment rates
  - Should be mutual
- Force majeure
- Bankruptcy / insolvency
- Waiver of breach
  - Must be in writing
  - Not continuing

# Provider Rights and Responsibilities

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- Services to be provided
  - Usually in attachment
- Licensure of provider's employed personnel
- Subcontracting
  - Avoid requirement to enter into written contracts with sub-contractors that are in accordance with the terms of the overall agreement

# Provider Rights and Responsibilities

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- Licensure / accreditation / peer review
  - Adhere to accreditation standards only if accredited
- Utilization review
  - Get policies if part of contract
- Provider can bill patient for non-covered services
- No waiver of patient cost-sharing

# Provider Rights and Responsibilities

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- Non-compliant patient transfer
- Legal / Regulatory compliance
- “Never events”
  - Private payors adopting – and extending - CMS initiative
  - Initial focus: hospitals

# Provider Rights and Responsibilities

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- **EMERGING ISSUE:** Solvency requirements
  - Regulator scrutiny now extending to providers
  - Manifesting in contracts
  - Disclosure, reserve requirements, prequalification

# MCO Rights and Responsibilities

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- Payment
  - Fee schedule
    - Usually attachment - should be incorporated by reference
    - Changes to fee schedule must be negotiated and agreed to by both parties
  - Claim submission
    - Submit within 180 days of DOS (60 days minimum)
    - If not, may be ineligible for payment (not shall)
    - Form of submission (paper v. electronic)

# MCO Rights and Responsibilities

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- Prompt pay
  - Usually state prompt pay laws will govern; may negotiate for shorter period and/or different rate of interest
  - State prompt pay statutes tend to only apply to insured business; can contract to include for self-funded plans
  - Possible alternate penalty: payment at charges (instead of fixed interest rate)
- Who has COB responsibility
- Annual rate increase

# MCO Rights and Responsibilities

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- Overpayment recovery
  - Notice to Provider within [180] days
  - No offsets
  - Disputes subject to general dispute resolution provision
  - No affirmative obligation to notify of overpayments

# MCO Rights and Responsibilities

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- Payors
  - Payors should be required to issue ID cards
  - Get update of payors monthly (if leased network / silent PPO)
    - **ISSUE:** Plans subcontracting, passing full risk to downstream entities or other networks
  - No payor can pay less than rates contracted for
  - Provider can terminate selective payors without terminating entire agreement
  - Payor may not unilaterally de-select Provider

# MCO Rights and Responsibilities

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- Eligibility verification / authorization
  - Plan may limit to what is within its power to verify
  - Can help with successor liability provision
- Policy and procedure modifications and publications
  - Web posting, newsletter, updated provider manual, then deemed incorporated into contract
- Steerage

# MCO Rights and Responsibilities

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- Access to information / audit rights
  - Limit to services within scope of agreement
  - Should not survive agreement by more than 6 months at most
  - **ISSUE:** Retrospective audits and recovery
    - Reaching back further
    - Using claim sampling
    - Unilateral recoupment
- Plan posting rankings of providers

# Negotiating

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- Form research team to gather information about the MCO (strategies, financial strength, and operational methods) and the marketplace
- Examine your own capabilities to succeed and requirements for success under managed care contracts
- Develop objectives for Contract
- Develop deal points for negotiation of Contract

# Negotiating

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- Determine the bottom line for withdrawal from negotiations of Contract
- Select negotiating team
- Compare Contract as offered against deal point list
- Identify Payor and Payor plans involved

# Negotiating

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- Identify Provider and Provider services involved
- Obtain and review copies of all documents to be incorporated into the Contract
- Prepare Provider-required revisions to Contract for presentation to Payor

# Negotiating

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- Review legal implications of Contract provisions to be negotiated (*e.g.*, antitrust, fraud and abuse, insurance regulatory, etc.)
- Negotiate Contract consistent with objectives, deal points, and bottom line previously determined
- Draft and review final language to reflect the negotiated terms of the Contract

# Risk-Based Payment Methods

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- Discounted fee-for-service
- Per diem charges
- Per case rate / global fees
- Capitation
- Percentage of premium
- Risk pools
- Pay for performance
- Government risk-based programs

# Summary

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- Have clear goals for MCO relationship
- Standard MCO agreement is negotiable
- Have focused negotiation team, with input from throughout the organization
- Negotiation involves business as much as legal considerations
- Involve counsel

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