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## MANAGED CARE CONTRACTING

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Contracting with a managed care organization (MCO) can affect many aspects of a psychiatric practice, from how payment is received to how the psychiatrist is permitted to provide services. In joining a managed care company's network, psychiatrists sometimes may not take the time to read the large print, let alone the fine print in MCO contracts. They hear that their colleague signed a contract with such-and-such company and make the assumption "it must be okay." This is a mistake.

Each contract is different – even from the same MCO. For example, an MCO's contract with a new employer can change the MCO's basic contract; or an MCO's contract with a new physician may be written at a different time under different circumstances than previous contracts with local physicians.

It is also a mistake to assume that a renewal contract is the same as the one received "last year." Often it is not.

As MCOs and psychiatrists have become more sophisticated about working in the managed care environment, contracts have become more sophisticated and more complex as well. Companies increasingly include important contract features in "attachments" such as provider manuals, which, if you're not careful, you may be unaware of until too late. Some companies may even attempt to charge you for this essential provider manual. However it is, you must be certain to obtain and review all documents referenced in the contract before entering into any contractual agreement.

### **RISK-BASED CONTRACTS**

In the 1990s, one of the most popular methods used by MCOs to control psychiatric fees was to shift the financial risk from the MCO to the psychiatrist. For example, if an MCO was paid a particular amount by an employer to provide healthcare to its employees, the MCO was responsible for providing care and took the risk that the amount paid by the employer might not completely cover the cost of the services provided. The MCO often chose to manage this risk through discounted payment rates or risk-based contracts with clinicians. In a risk-based contract, the MCO pays the clinician a fixed rate per patient, regardless of the level of care. This shifts the financial risk from the MCO to the clinician, who is now responsible for managing the cost of care effectively. Although risk-based contracting is rarely used with individual psychiatrists today, it is still used with institutions and provider groups. A risk-based contract may include any one of a variety of pricing controls, including withholds, case rates, and capitation.

### **Withhold Agreements**

A "withhold" is a mechanism whereby the MCO retains a portion of its payments to psychiatrists to reward or penalize them based upon use of services. Many MCOs withhold 10 to 20 percent of a practice's fees, for example, with return of these funds contingent on certain overall budget targets being achieved. Psychiatrists who managed the care of the MCO's patients in a "cost-effective" manner receive a portion of the withhold.

MCOs use profiles of clinicians' utilization patterns to determine the amount of the withhold repaid. Psychiatrists should:

- Question the validity of the MCO's arguments for withholding funds, particularly if the volume of their services is dictated by primary care physician (PCP) referrals or constraints imposed by utilization review (UR).
- Obtain information from other clinicians under contract with the MCO about the MCO's history in returning withholds.
- Examine the incentives MCOs offer PCPs with respect to specialty care referrals, since many are given strong incentives to minimize referral costs.

### **Case Rates**

A case rate is an all-inclusive rate paid for a specific procedure or diagnosis. Case rates are typically based on the prevailing fee schedule for the unit cost multiplied by the average number of services delivered per case. For example, the case rate for outpatient psychotherapy involving an uncomplicated adjustment disorder might be calculated using an average cost per session of \$80 multiplied by the average number of six sessions, or \$480. If the patient requires ten sessions, the psychiatrist will receive no additional payment from the MCO. Conversely, if the problem can be resolved in three sessions, the MCO receives no refund.

Psychiatrists should be aware of the high degree of risk case rates entail because they represent a fixed fee for services, regardless of the number of services needed. You must remember that the MCO has calculated the case rate very carefully to be as sure as possible that they will not be expending any more money than is necessary.

### **Capitation**

Capitation is a stipulated dollar amount established to cover the cost of healthcare services delivered to a given population. The term usually refers to a negotiated dollar amount for each person in the patient population, which is paid periodically, usually monthly, for the delivery of all health services under the terms of the practice's contracts. The payment is the same regardless of the number of patients in the population who are actually treated or the amount of services rendered.

Typically, this is a per member per month (PMPM) fee and, for commercial populations, mental health services usually come in somewhere between \$1 PMPM and \$10+ PMPM.

Psychiatrists should note that under capitation:

- Additional technical/administrative skills not directly related to traditional care services are required.
- An inability to control services can result in financial difficulties.
- The payer may increase services offered to patients without increasing the psychiatrist's capitation rate.
- A capital base is needed to protect against statistical fluctuations.

- The psychiatrist must take on insurance company responsibilities.
- Administrative costs and time may increase.

The following are two good, basic reference books on capitation published by the American Psychiatric Association Press (APPI): *The Psychiatrist's Guide to Capitation and Risk-Based Contracting* and the *APA Capitation Handbook*.

## **PROBLEMATIC CONTRACT ISSUES**

It is very important that psychiatrists review every aspect of a contract before signing the document. This includes all attachments. Always check with your malpractice carrier to make sure nothing in the contract conflicts with their policy. And always check with your lawyer. Each psychiatrist's situation is unique, and no one "model" contract can protect all of them equally. The following are some of the more troublesome clauses that may be found in MCO contracts.

### **Evergreen Renewals**

An evergreen clause allows the MCO to automatically renew your contract without giving you an opportunity to renegotiate terms. Unless the contract provides for amendment of its terms by either party, the terms negotiated for the initial term of the contract will remain in effect throughout each renewal. If possible, you should try to negotiate inclusion-of-amendment provisions in the contract.

### **Incorporation by Reference**

These clauses state that documents, such as the provider manual, practice guidelines, and level-of-care criteria, are automatically incorporated in the contractual agreement by reference. Make sure that you have thoroughly reviewed any materials mentioned in the contract.

### **Indemnification and "Hold-Harmless" Clauses**

Some MCO contracts require that the psychiatrist hold the MCO harmless and indemnify the MCO for any claims made against it. You should attempt to have these types of clauses deleted. If this cannot be done, you might ask the MCO to substitute language such as, "The MCO shall be solely responsible for its own acts and decisions concerning this contract, and the psychiatrist shall be solely responsible for his or her own acts and decisions concerning this contract."

Psychiatrists should also be aware that there is another type of hold-harmless language, which may be required in certain contracts by federal or state law, that does not implicate their malpractice insurance coverage. An example of this is the following:

Provider shall hold harmless and indemnify Members against non-payment by any Payer for any reason, including but not limited to, insolvency or breach of this Agreement. This provision shall not prohibit Provider from collecting any applicable co-insurance or deductibles in accordance with Member's contract with Payer.

### **"Most Favored Nation" Clauses**

In some situations you may encounter a contract with a "most favored nation" clause. The net effect of this kind of clause is to guarantee the MCO the lowest price you are willing to accept from *any* private payer, and it should be considered as another mechanism used by MCOs to

control rates paid to psychiatrists. Whenever possible, this kind of clause should be negotiated out of the contract.

### **No-Cause Termination Provisions**

If your contract contains termination-without-cause provisions, make sure that the clause is mutual, allowing both you and the MCO the option to terminate the contract at any time with prior notice (usually sixty to ninety days). If you do terminate your contract be sure to send notice in writing that the MCO must remove your name from its list of network providers. Also, remember that even if you terminate your contract with the MCO you are bound to the terms of that contract until the treatment for patients covered under the contract is ended.

When you sign with an MCO, you should ask about any appeals processes that may exist, so you are familiar with the process if the MCO terminates you without cause.

### **Severability Clauses**

Contrary to popular opinion, one illegal or unenforceable section does not necessarily nullify an entire contract. It is increasingly common to see "severability" clauses (which say that if one clause in the contract is unenforceable, the rest of the contract remains binding) combined with "change of law" provisions that allow the parties to renegotiate or restructure certain aspects of a contract affected by changes in laws, regulations, or court interpretations.

### **Exclusivity Requirements (Non-Compete Clauses)**

Exclusivity provisions, also called non-compete clauses, prohibit you from having business relationships with competitive programs—even after you have left a network. You should evaluate exclusivity provisions carefully, especially if you are thinking about forming a group or participating in an entity that could accept risk-based contracts.

### **Gag Clauses/No Disparagement Clauses**

Some MCO contracts contain provisions that prohibit a psychiatrist from making any negative comments about the MCO. Other banned topics may include noncovered treatment options, financial incentives, or adverse plan decisions—any of which may put you in an ethically dicey situation.

Gag clauses may also be a hindrance later, especially if you need to appeal a reimbursement denial. Even apart from the appeals process, gag clauses should be viewed with extreme caution, since they can greatly affect your ability to advocate for your patient.

### **ADDITIONAL TIPS**

- Review the contract for billing and balance billing provisions that restrict your ability to bill patients.
- Review credentialing requirements. Personal information, such as medical history, may be unwarranted if it does not currently affect your ability to practice medicine.
- Study the confidentiality terms in the contract; federal and state laws supersede contractual requirements.
- Study utilization review requirements to learn procedures for prior authorization, concurrent review, retrospective review, use of formulary restrictions, access to physician

reviewers, and appeal mechanisms. MCOs frequently discuss these topics in the provider manual, which you should review before the execution of the contract.

- Pay attention to how the MCO will authorize services in an emergency. Most MCOs have a utilization management process in place that can authorize emergency services at any time, but the flexibility of the authorization process varies. Ask detailed questions about the process before signing a contract.

### **ASK QUESTIONS AND NEGOTIATE**

Contract negotiation may be possible, depending on the market share of the MCO and the size and importance of your practice. If you cannot negotiate, ask questions on the above and any other issues that arise from reviewing the contract. You should be suspicious of any unwillingness on the part of the MCO to respond to questions.

### **ENSURE THAT ALL REPRESENTATIONS ARE IN WRITING**

You should obtain any changes or clarifications to the terms of the contract on the body of the contract itself. Any additional clarifications made by representatives of the MCO that do not agree with the contract should be incorporated in an amendment that conforms to the contractual requirements.

### **REVIEW AND SIGN FINAL AGREEMENT**

No matter how careful you've been, it is likely that only a lawyer has the background to review the final agreement to make sure that it addresses all of your concerns. You may want to contact the APA Legal Consultation Plan administrator at (202) 508-8721.