



## Do You Have a Managed Care Contract or a Muddled Catastrophic Contract?

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A bad contract with a Managed Care Organization (MCO) can be a nightmare for your practice, the patients you treat, and can play havoc with your finances. Some physicians find themselves seeing too many patients in order to maintain cash flow as a result of poor reimbursements from MCOs. You can avoid this catastrophe by spending a little time reading and understanding MCO contracts BEFORE you sign them. This article will cover things to consider before you review any contracts, including language that you should consider in any contract and provisions to question and avoid. This article will not cover reimbursement issues except as required to ensure the contract does not violate Florida law.

Before you start to review MCO contracts, you should analyze your office performance and look at your internal contracting procedures. While the size of the practice will dictate your policies, every office should periodically review their procedures. Do you know what your time is worth? Do you know the extent of your overhead costs? According to Dr. Tom Hicks (a family physician and the Medical Director of Patients First, Tallahassee) an excellent, simple calculation is to take your overhead costs and divide by the number of patients seen (or number of procedures accomplished). This gives you a known amount (sans professional costs) to use in evaluating contract reimbursement rates. Who reviews and understands MCO contracts in your office? Who monitors not only your compliance with the contract but the carriers' compliance as well? These are a few of the questions you should ask before you review MCO contracts.

Through the Office of Insurance Regulation (OIR), the state has many laws to regulate the insurance industry. For example, Chapter 641, Florida Statutes, regulates Health Maintenance Organizations (HMOs) and Chapter 627, Florida Statutes, regulates the other insurance entities. Included in the insurance code are many protections for Florida patients. Statutes outline items that must be included in subscriber contracts, the clarity of the language, rates, etc. MCOs are required to have OIR pre-approval of any subscriber contract prior to offering the plan for sale. For physicians there is NO SIMILAR protection. The state considers you to have enough knowledge of contract law to protect yourself.

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During your initial scan of the contract, identify sections and elements that should be in a balanced and fair contract. Often the MCO will include clauses for its own protection and self-interest which should be avoided by the provider. In your review, mark these provisions for question and/or negotiation.

### CONSIDER / INCLUDE:

**(1) FINANCIAL IMPLICATIONS.** While your primary purpose may be to provide services to patients; if you do not cover your costs you will not be in business for very long.

The contract must clearly define compensation rates/amounts. MCO contracts usually specify a fee schedule; make sure you review, understand and accept any referenced schedule. Also ensure that a copy is included as an attachment to the contract. If different fee schedules are incorporated into the contract, make sure you have copies of each and understand their financial implications. If appropriate, address the definition of "usual and customary" (and when it might apply, i.e. for emergency services). Often MCOs will provide you with a small sample of what they consider to be usual and customary reimbursement fees. Make sure you review enough examples to feel comfortable with their payment plan. Discuss exactly when and how authorizations are obtained - does authorization guarantee payment? Put any agreed upon modifications to their normal procedures into your contract. If the MCO ties the fee schedule to Medicare RBRVS, you might want to designate a specific year, or specify an exact conversion factor that can only be changed by mutual agreement. Also have some understanding of compensation rates should you decide not to sign the contract and treat a MCO patient as a non-participating provider.

You should have some understanding of the MCO's policy-holders' /subscribers' agreements as well. Subscriber contracts define the covered services for which you will be reimbursed (and either by omission or exclusion, the non-covered services for which you may bill the patient your usual and customary amounts). Employees of the MCO will

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often erroneously give you authorization to perform a non-covered service; however, at a later date the MCO will deny payment for that service.

You must understand the administrative burden the contract will require, for example, your office costs to comply with the contract (i.e. claim filing and follow-up costs). Ask if the MCO charges administrative fees (by withholding a percentage of monthly or annual reimbursements). Are fees built in, if so, are they excessive? This cost can mean the difference in profit or loss from MCO contracts for small practices. Dr. Hicks stated that one contract he reviewed entitled the MCO to compensation of excess costs incurred if a physician referred a patient to a non-participating provider.

Watch out for language that says "will pay the lesser amount of ..." This is a red flag for an issue that requires additional investigation. How to negotiate with the MCO and make changes to a proposed contract will be discussed later in this article.

#### **(2) PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS.**

Because of the environment of professional liability insurance in Florida, many physicians are self-insuring or going "bare." This is not a reference about heading to the nearest nude beach, but to the minimum coverage allowed under the Florida Financial Responsibility law [Section 458.320, Florida Statutes] for physicians holding an active license. When an MCO discovers you are self-insuring, it will reevaluate your credentialing and assess your risk to the company - many physicians who self-insure are receiving contract termination letters. MCO contracts often require medical malpractice insurance in specific amounts, for example, coverage of \$1,000,000 per occurrence and \$3,000,000 aggregate. To avoid problems, we suggest that you have the language changed to say that the MCO "accepts \$250,000/\$750,000 or the lesser amount required by state law;" or simply have the contract require you "be in compliance with the state financial responsibility laws." Remember amounts may vary depending on if you have or need hospital privileges. Note that the contract may require that you have privileges in at least one member hospital.

**(3) NOTICE REQUIREMENTS.** Make sure the MCO cannot unilaterally change/amend the contract or their rules/policies without notice to you. Ensure you get sufficient notice and have the ability to change/amend/reject any proposed changes (i.e. all changes require the agreement of both parties) or you have the ability to terminate the contract on the effective date of the contested change. You should be given at least 60 days to review any proposed changes. This notice will prevent a decrease in your reimbursement fees without your knowledge. Some contracts provide for notice of amendments and effective dates to be given by the MCO, but provide no options for your approval, ability to

recommend changes, etc. Some contracts are very detailed, including how the notices are to be delivered. Make sure you understand and agree with these provisions. The time to protect yourself and your practice is BEFORE you sign the contract. Note that notice requirements will vary in different portions of the contract - read the entire contract.

**(4) TERMINATION / RENEWAL LANGUAGE.** The contract usually identifies a list of circumstances under which termination "for cause" may occur. It should also allow either party to terminate the contract without cause, with 60 or 90 days notice. Watch for language limiting termination effective dates. For example, don't get trapped into the situation where you can only get out of the contract on the anniversary date. Watch out for automatic or immediate termination language, for example: "if disciplined by a regulatory agency," - could this include a very minor offense? Make sure sufficient time is established for contract review before your anniversary or renewal date.

#### **WATCH OUT FOR:**

**(1) HOLD-HARMLESS CLAUSES.** These clauses declare that the provider shall indemnify and hold the MCO and third parties harmless from any liabilities incurred as a result of professional services provided (or not provided) by the physician with respect to a covered subscriber. Many MCO contracts presented will contain this clause. WE SUGGEST YOU CROSS OUT AND INITIAL/DATE THIS CLAUSE. At a minimum you should negotiate a mutual hold-harmless clause.

#### **NOTE:**

Minor contract changes can be made in pen and ink on the face of the contract by simply initialing and dating the change. Major changes or new language should be by AMENDMENT/ATTACHMENT/ADDENDUM to the contract and signed by both parties.

**(2) MOST FAVORED NATION CLAUSE (OR MOST FAVORABLE AGREEMENT CLAUSE).** This clause requires the provider to charge the MCO the same discounted rate (i.e. the lowest contracted rate) negotiated with any other MCO. Thus, if you give one MCO a 20% annual discount you must give the MCOs the same discount). WE SUGGEST YOU CROSS IT OUT AND INITIAL/DATE.

**(3) ALL PRODUCTS CLAUSE.** This clause makes you a network member for all plans and products the MCO writes (HMO, PPO, Point of service, etc., which creates reimbursement issues and termination problems). WE SUGGEST YOU CROSS IT OUT AND INITIAL/DATE. The best method is to have separate contracts for each plan you are going to participate in or have the contract identify only those plans you wish to participate in. Certain provisions are contrary to Florida law.

**(4) RECORDS ACCESS AND CONFIDENTIALITY CLAUSES -** Be cautious of how much information you must provide the

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MCO about your practice and your patients (including MCO access to your records and consent and cost requirements for obtaining or auditing copies of patient records). Some contract language requires you to indemnify the MCO for any fines or penalties they get based on inaccurate or incomplete information they obtain from you and pass on to others. Some contracts give the MCO access to your records up to five years after your contract terminates. Often contracts say they can access your records "upon reasonable notice." We suggest you define what reasonable is. It is crucial for you to understand what you are signing.

**(5) NON-COMPETITION CLAUSES and EXCLUSIVE CONTRACTS.** Contract language may preclude you from participating in other plans. These clauses are very dependent on the location and environment of your practice, but they only protect the MCO and never serve the physician well. Several types are in violation of Florida law.

**(6) WHISTLE-BLOWER CLAUSES.** These clauses require that you report other providers for inappropriate use of discount rates, non-participating providers rendering care and balance billing, etc. Because of recent cases, these clauses don't appear often.

**OTHER CONSIDERATIONS:**

**(1) MAKE SURE THE CONTRACT DOESN'T VIOLATE FLORIDA LAW.** Section 641.315, Florida Statutes, addresses and defines many terms and conditions required in an HMO provider contract. Especially ensure the contract aligns with the prompt pay laws (see Sections 641.3155 and/or 627.6131 Florida Statutes), which includes timelines for claims, denials, payments, appeals, interest, etc. MCO contracts will often include balanced billing language so make sure it is in accordance with Florida law. Balanced billing is usually not allowed within HMO contracts; however, it is allowed for non-participating providers seeing PPO patients. Also for PPOs, copay and deductible language will usually be included. If the contract mentions a section of Florida Statutes, read it, and make sure it identifies the year since statutes have the potential to change annually.

**(2) WATCH FOR UTILIZATION REVIEW LANGUAGE.** Some contracts will require providers to "fully comply with" the MCO's utilization management program. Make sure you understand what that program is and if it will affect your reimbursement rates. The Florida legislature is establishing more requirements for MCOs to audit/police medical providers. It is also giving administrative agencies more authority to review and prosecute "utilization" violators (which are reported by the MCOs). Ensure adequate and agreeable appeal language is included. The legislature is also demanding increased use of practice parameters and guidelines by physicians; violations open new doors for

medical liability suits.

**(3) MAKE SURE YOU UNDERSTAND THE MCO DISPUTE RESOLUTION PROCESS.** As always, make sure you have adequate notice and have time to respond or provide required information. Is there an arbitration clause; is it final and binding? Where would arbitration be held (we suggest you make it in your county)? If you want the ability to arbitrate, make sure you understand all potential issues involving arbitration and ensure that parties share costs.

**(4) WATCH FOR REFERENCED BUT MISSING DOCUMENTS.** MCO contracts will often reference other documents (i.e. an unfamiliar fee schedule, definitions, programs, etc.) that are incorporated into the contract, but not provided to the physician. Watch for "except as otherwise specified herein" language, or "as required by applicable law." If you can't find what they are referring to, ask to see/review copies or have the MCO point it out BEFORE you sign the contract.

**(5) DON'T LEAVE ANY BLANK OR OPEN SPACES.** This will only lead to misunderstandings and disputes. As a minimum initial the space so you will remember that it was blank.

**(6) MAKE SURE YOU UNDERSTAND THE MCO'S REFERRAL POLICIES.** Does the contract allow you to refer patients to specialists as you deem medically necessary?

**YOU CAN NEGOTIATE WITH MANAGED CARE ORGANIZATIONS**

Contracts are written by and for the benefit of the MCO, thus it becomes your responsibility to make the relationship work for you. While the ability to negotiate often depends on the number of providers in your locality - groups reduce the number of individual providers available and give bargaining power - you will never know your power to negotiate until you exercise it. Always think about and prepare offers and counter offers. Knowledge is power - contract negotiating power and the power to save/make money with MCO contracts. Be reasonable, go into the negotiation with a "win-win" philosophy, and use the negotiation exercise to open an honest dialog with the MCO. But also remember, "If it ain't in writing, it ain't agreed on." Also do not get frustrated talking to MCO provider relations personnel. If they do not have the power to modify your contract, ask and get to the correct authority immediately.

You can change the contract mailed to you. Look for potential additions or changes in contract language in sections dealing with the following: claims filing/payment deadlines if different from state law; how the MCO resolves disputes; amounts paid for primary, secondary, and tertiary procedures; the ability to drop patients/subscribers; contract termination policies; charging

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subscribers/members for non-covered services; refunds; contract revisions; carve-outs, etc. Always be alert for phrases that limit the liability of the MCO. An area that providers often overlook when reviewing an MCO contract is the MCO's CPT code bundling and modifier methodology. MCOs have proprietary software programmed to accept only certain ways of bundling CPT codes and deny the claim if certain modifiers are used. There will be some variation between MCOs in their coding and bundling methodology and understanding each will reduce billing frustrations. One approach is to offer several combinations of oft-performed procedures (using CPT codes) that you use in your practice to the MCO and see how they would be reimbursed. If you disagree with the MCO's approach, clarify any agreement you make in the contract. Understand the MCO's bundling methodology BEFORE you sign the contract.

Be aware that there are probably certain contract clauses the MCO will not negotiate (different clauses for each MCO) and you must decide if you will compromise or if they will be deal breakers.

### FINAL THOUGHTS:

If you don't have the time to review your contracts, for the next two or three years, pay an attorney to review them for you; have him/her sit down with you and explain the contract clauses and pitfalls. After three years you should (1) be educated and feel comfortable enough to do the review yourself, and (2) be able to figure out the financial viability of each contract. It is easy to go from the foreign to the familiar - with practice comes increased speed of the review and increased economic benefit.

Don't sign a contract unless you have read and understand all the provisions and conditions. Don't sign every MCO contract you are offered. Review them and make intelligent, financially responsible decisions. Consider dropping the lowest money maker (or loser) each year. Many MCO's will not negotiate a contract until a provider threatens to not renew.

While a recent federal court case [*International Healthcare Management et al. vs. The Hawaii Coalition, the Hawaii Medical Association, et al.*] held that medical associations can review and comment on physicians' managed care contracts without fear of violating federal antitrust laws that prohibit independent physicians from banding together to negotiate contracts, the FMA is just not staffed to provide this service. But the FMA General Counsel can provide you with the name of an outside attorney who will review your contracts as a reduced cost as an FMA member benefit. Using FMA's managed care review benefit, the FMA maintains a relationship with individual health care attorneys who have agreed to review contracts for members at substantial discounts.

*The FMA does not provide legal advice. This article is to encourage every physician to improve the health of the managed care environment, encourage every FMA member to develop better dialogs with MCOs, and assist in improving member's practices financial interests.*

*Dr. Mike Wasylik, Orthopaedic Surgery, Tampa, is chair of the FMA's Managed Care Committee and welcomes feedback on issues dealing with MCO contracting or managed care topics that members feel should be addressed. Please bring problems to the attention of your county medical society executive director so they can be forwarded to Fred Whitson, FMA Director of Medical Economics.*

*Specialized legal help in reviewing managed care contracts can be provided by the Florida Physicians Association by calling (904) 637-0060 or on the Web at [www.floridaphysicians.org](http://www.floridaphysicians.org).*



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