

Health Plan Contracting: A Guide For Physical Therapists



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Paul J. Welk, JD, PT

Disclaimer

- The purpose of this presentation is to provide a general overview of concepts and is not intended to serve as legal advice. It is important to consult an attorney for individual legal advice.

Contract

- An agreement between two or more people to do something, especially one formally set forth in writing and enforceable by law.

<http://www.yourdictionary.com/contract>

The Contracting Process

- Preparation
- Negotiation
- Contract Language Issues / Considerations
- Open Discussion

Preparation

- Gain a current working knowledge of the subject matter.
- Understand the strengths and weaknesses of the parties relative to the negotiation.
- Understand the leverage of the parties.
- Determine who within the organization is in the best position to negotiate the contract.

Preparation

- ❑ Understand the terms of any current contract.
- ❑ Understand the Provider's key metrics / data.
- ❑ Know the external factors.
- ❑ Consider the Provider's best attributes.

Preparation

- ❑ Prepare a wish list and reasonable fallback positions.
- ❑ Consider presentation of data.
- ❑ Know the bottom line.

Goals of the Organization

- ❑ Organization's access to patients.
- ❑ Maximum reimbursement.
- ❑ Minimal administrative effort.

Negotiation

- ❑ Recommend face-to-face meeting.
- ❑ Make sure you have the entire contract, including any referenced terms and conditions, addendums or exhibits.
- ❑ If you are handed a “standard contract” it is generally not favorable to your position.
- ❑ Read the entire contract, no matter how boring it may be.

Negotiation

- ❑ Educate payors as to what physical therapy costs, who physical therapists are and the benefits that are received for the payments for physical therapy.
- ❑ Consider organization's role in the community as a physical therapy provider and use this leverage as an advantage.
- ❑ Know when to walk away. The best contract may be the one not entered into.

Sample Provisions

- Ancillary Provider Manual means that document or set of documents which set forth rules, guidelines, policies and procedures, and may include, without limitation, Network participation requirements...and any applicable Network Ancillary Provider Manual or general Provider Policy and Procedure Manual. The Ancillary Provider Manual is incorporated into and made a part of this Agreement.

Sample Provisions

- “Quality Improvement/Management” means programs, processes and procedures which may include without limitation, evaluation of the quality, effectiveness and efficiency of the use of Health Services (including but not limited to improved health outcomes), procedures and facilities on a prospective, concurrent and retrospective basis. A description is included in the Ancillary Provider Manual.

Sample Provisions

- ❑ Ancillary Provider agrees to abide by the terms of the Ancillary Provider Manual, and to participate in and comply with Plan's or Plan's Designee's Utilization Management Program.

Sample Provisions

- ❑ Ancillary Provider shall not enter into any subcontract to provide Health Services without prior approval, and shall provide prior approval rights regarding any subcontractor with whom Ancillary Provider intends to contract to perform Health Services and Ancillary Provider's other duties and obligations under this Agreement.

Sample Provisions

- Ancillary Provider shall require subcontractors to abide by the terms and conditions of this Agreement and shall indemnify Plan for any failure of any subcontractor to so comply. Ancillary Provider agrees that payor may contract directly with any Health Services providers rather than relying on the subcontracting arrangements entered by Ancillary Provider.

Sample Provisions

- Payor shall have the right to conduct financial audits to verify the accuracy, legitimacy and appropriateness of claims submissions, and to ensure compliance with the Agreement.

Sample Provisions

(continued)

Should Ancillary Provider disagree with the preliminary audit report, it must file notice of its disagreement (“Dispute Notice”) within thirty (30) days of the date of Ancillary Provider’s receipt of the preliminary report. If Ancillary Provider fails to provide a Dispute Notice within thirty (30) days from the date of receipt of the preliminary audit report, the preliminary audit report shall automatically become final.

Sample Provisions

(continued)

In the event the final audit report demonstrates that Ancillary Provider owes money for erroneously or overpaid claims, payor may, in its sole discretion, exercise its right of recovery via offset, re-audit Ancillary Provider, terminate this Agreement without cause (but without regard to any timing limitation set forth therein), or commence the dispute resolution processes as set forth in the Agreement.

Sample Provisions

(continued)

The timely submission of a Dispute Notice by Ancillary Provider is an absolute prerequisite to resorting to the Dispute Resolution Sections of this Agreement, and no action or other proceeding may be brought by Ancillary Provider to recover a Claim disallowed for payment or retracted as the result of a financial audit unless and until a final audit report is issued by payor.

Sample Provisions

- Ancillary Provider warrants and represents that at the time of entering into this contract, neither it nor any of its employees, contractors, subcontractors or agents are ineligible persons identified on the General Services Administration's List of parties Excluded from Federal programs (available at <http://www.gsa.gov/portal/content/103455>) and the HHS/OIG List of Excluded Individuals/Entities (available at <http://www.exclusions.oig.hhs.gov>)

Sample Provisions

- ❑ Ancillary Provider understands that Plan may compile statistics and information on the utilization of Health Services by Covered Person/Members and Ancillary Provider and the outcome of services provided by Ancillary Provider (the “Profile Information”). Plan shall have the right to release Profile Information to employer groups, Ancillary Provider, other providers and others.

Sample Provisions

- ❑ The initial term of this Agreement shall commence on the Effective Date and shall continue in effect for a term of one year, automatically renewing for consecutive one-year terms unless otherwise terminated as provided herein.
- ❑ Either party may terminate this Agreement at any time, without cause, by giving at least 90 days prior written notice of termination to the other party.

Sample Provisions

- This Agreement may be amended only in writing signed by both parties. Notwithstanding the foregoing, payor may amend the Ancillary Provider Manual, claims adjudication logic, Quality Improvement/Management or Utilization Management, by giving notice of such amendment to Ancillary Provider at least forty-five (45) days in advance of the effective date of the amendment.

Sample Provisions

(continued)

If Ancillary Provider decides not to accept the amendment, Ancillary Provider shall provide within thirty (30) days of Ancillary Provider's receipt of such amendment, written notice of its objection to payor and such notice of objection shall constitute Ancillary Provider's notice of termination under the Termination Without Cause Section of this Agreement.

Sample Provisions

(continued)

Failure of Ancillary Provider to object to an amendment in writing to payor within the time frames described herein shall constitute acceptance of the amendment by Ancillary Provider.

Sample Provisions

- ❑ Neither this Agreement, nor any rights or obligations hereunder may be assigned, either by operation of law or otherwise, or delegated or transferred in whole or in part, without the prior written consent of the other party, except that payor retains the right to assign, either by operation of law or otherwise, delegate, or transfer in whole or in part, the Agreement to an Affiliate, or to delegate to its subcontractor in the ordinary course of business.

Sample Provisions

- ❑ Both parties shall comply with all requirements of law relating to their obligations under this Agreement, and maintain in effect all permits, licenses, and governmental and board authorizations and approvals as necessary for business operations.

Sample Provisions

- Plan and Ancillary Provider shall comply with the requirements of the state's prompt payment legislation, as may be applicable, for payment of Clean Claims for Covered Services. In the event the prompt payment legislation is not applicable, payor shall require Plans to use best efforts to make payment or arrange for payment for all Clean Claims for Covered Services submitted by Ancillary Provider within ninety (90) days of receipt.

Sample Provisions

- ❑ Payment to Ancillary Provider is based on per diem reimbursement. Payor shall reimburse Ancillary Provider as follows:
 - ❑ Reimbursement for therapy services will be the lesser of \$_____ per day, or billed charges.

The Silent PPO

- A silent PPO is a term of art for a kind of PPO abuse. Essentially a silent PPO occurs when a payor receives a PPO discount to which it is not entitled... In a silent PPO, after the patient pays his share of the bill and the provider submits the outstanding balance to the payor for payment, the payor notices that the provider is a member of a PPO. The payor then proceeds to pay the provider at the PPO discounted rate instead of the usual and customary rate. (Roach v. Travelers Prop. Cas. Ins. Co., S.D. Ill. Jul. 24, 2008).

Sample Provisions

- “Network” means a group of providers that supports, through a direct or indirect contractual relationship, the product(s) and/or program(s) in which Covered Person/Members are enrolled. Ancillary Provider will participate in the Network(s) designated on the Participation Attachment(s) or Plan Payment Schedule.

Sample Provisions

- “Other Payors” means persons or entities utilizing the Participating Network pursuant to an agreement with payor, including without limitation, other Plans, employers, Carriers, insurers or Administrators.

Sample Provisions

- ❑ Provider understands and agrees that payor allows certain Affiliates, Accounts, plans and, where applicable, their respective affiliates, as well as any entity or entities covered under a Network Access Arrangement to access the network established under this Agreement as a Health Plan for persons covered under Network Products as offered or administered by such entities.

Sample Provisions

- ❑ Provider will collect Copayments, Coinsurance and Deductibles as required by the Member's Plan Document, except where such collection is prohibited or restricted by applicable Laws.

Sample Provisions

- If provider receives an Overpayment from Health Plan, Health Plan shall be entitled to setoff any such Overpayment against any future payments due Provider and/or take any other action against Provider authorized under this Agreement or as otherwise permitted by Law. If no future payments are due to Provider, Provider shall reimburse Health Plan an amount equal to such

Sample Provisions

(continued)

Overpayment within thirty (30) days of demand by Health Plan. Provider shall report the receipt of any Overpayment it receives from Health Plan as soon as practicable after learning of such Overpayment. Health Plan may take any action against Provider as permitted by Law if Provider receives an Overpayment from Health Plan.

Sample Provisions

- ❑ Those matters, disputes or controversies arising under this Agreement between Health Plan and Provider that are described in Health Plan's Network Practitioner's Office Manual, or its successor, are subject to the processes and procedures set forth therein and shall be handled in accordance with such processes and procedures.

Sample Provisions

- Be cautious to identify a “most favored nation” clause in a contract. This provision provides that the payor will be given the benefit of the financial arrangement in place with another payor.

Sample Provisions

- Payor has and retains the right to designate Provider as a Participating Provider or non-Participating Provider in any specific Plan. Payor reserves the right to introduce new Plans during the course of this Agreement and Provider agrees that Provider will provide Covered Services to Members of such Plan under the applicable compensation arrangements as set forth in such Plan or as otherwise determined by the Company.

Considerations

- ❑ Strength in numbers (PT)
- ❑ Strength in numbers (multidiscipline)
- ❑ Better quality / outcomes should equal better reimbursement and less administrative burden.

Questions, Comments, and Experiences

TUCKER | ARENSBERG
Attorneys

Paul J. Welk, PT, JD
Tucker Arensberg, P.C.
pwelk@tuckerlaw.com
(412) 594-5536