

## **REVIEWING, NEGOTIATING, and TERMINATING CONTRACTS**

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The terms of your contract with an insurer, or managed care organization (MCO), can affect many aspects of a psychiatric practice, from how much you are paid to which services you are permitted to provide and how you are expected to provide them. It's vital that you take the time to thoroughly read any contract you sign on to. You cannot just take the word of a colleague who says he signed a contract with the same company, the terms were good, and his lawyer said it was fine.

Each contract is different – even from the same company. For example, an insurance company's contract with a specific employer may change the insurer's basic contract, or a contract with one physician may be written at a different time under different circumstances than the contract a second physician receives. 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 insurers and psychiatrists have become more sophisticated about working in a managed care environment, contracts have become more sophisticated and more complex as well. Companies may include important contract features in appendixes, addendums, or in "attachments" such as provider manuals, which, if you're not careful, you may be unaware of until too late. You must be certain to obtain all documents referenced in a contract and to review them before entering into any contractual agreement. If there is any element you do not understand in the contract, do not sign until it is explained to you and you are clear that element is something you can comply with.

Most contracts stipulate the fees that will be paid to in-network physicians for specific procedure (CPT) codes and which physicians will be paid for which CPT codes. For instance, some insurers may still stipulate they will only pay psychiatrists for the psychiatry CPT codes (the 908xx series) even though since 2013 psychiatrists must use the evaluation and management (E/M) codes (the 992xx series) with add-on psychotherapy codes when they do evaluations and medical management of patients. Or they may refuse to pay for add-on codes, which would make providing appropriate psychiatric care impossible.

Contracts may also stipulate the physician's status with the insurer in various settings. Some contracts provide that an in-network psychiatrist is in-network at *every* place of service, others may just be for a specific setting. This is an issue that has proved problematic for some psychiatrists who practice in clinics where many forms of insurance are accepted, but who choose to have simultaneous private practices where they do not accept insurance. If the clinic's contract with an insurer says it covers the psychiatrist in all settings, then if the psychiatrist sees a patient who has that insurance in her private practice, she will be an in-

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network provider there as well, and will only be paid the in-network fees negotiated under the clinic contract.

Even if the clinic's contract with the insurer does not state that all places of service are covered, a psychiatrist wishing to be considered out-of-network in another setting will have to notify the insurer in writing of his desire to have a different status in that setting.

Because many insurance companies are having trouble maintaining enough psychiatrists in their networks to meet their enrollees' needs, they may make it difficult for psychiatrists to sever their relationship. The APA's Practice Management HelpLine has received calls from members who were unable to get out of their contracts for months and months because the insurer maintained they hadn't received faxes or e-mails that the doctors had used to convey their change in status. We recommend that any notifications about a change in status with an insurer be done in writing and be sent by registered mail, return receipt requested. This way you will have a record of the company's having received your request.

It is also true that because insurance companies are having trouble maintaining enough psychiatrists in their networks you may be able to negotiate fees or terms much better than the company originally offers you. Don't be afraid to negotiate. If you say "no" to the first offer and nothing better is forthcoming, you can always change your mind.

With the movement toward integrated care there has been a revival of risk-based contracts, or capitation, where a psychiatrist may receive a set case rate per month for managing a patient's care. Any such contract should be explored in depth before it is agreed to.

**It is important to keep in mind that until a contract is signed, its terms are open to negotiation.**

### **CONTRACT CLAUSES/TERMS YOU NEED TO KNOW**

The following are some of the more important clauses that may be found in insurer's contracts.

#### **Fee Schedule**

Be sure to find out what you're going to be paid and which codes you're allowed to bill for before you sign any contract. This is most likely incorporated as an appendix or addendum to the contract.

#### **"Most Favored Nation," or Comparable Provider Rate Clauses**

In some situations you may encounter a contract with a "most favored nation" or comparable provider rate clause, which requires the physician to notify the MCO if you agree to accept a lower pay rate from another insurer. The net effect of

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this kind of clause is to guarantee the insurance company the lowest price you are willing to accept from *any* private payer. Whenever possible, this kind of clause should be negotiated out of the contract.

### **Utilization Management Requirements**

You should know what prior authorization/precertification protocols you will have to comply with as well as what criteria the insurer uses to determine medical necessity. You also need to understand what retrospective review/audit requirements will apply. This information is most likely to be found in an appendix or addendum to the actual contract.

### **Medical Records Disclosure Obligations**

Be sure you understand what the requirements are under the contract for medical records disclosure and what the confidentiality provisions are. You don't want to be contractually bound to provide medical information that is potentially in conflict with other legal obligations.

### **Purchased Network Provision**

This has to do with a network's permission to sell or transfer its network to another company. This means that you might find yourself in-network for a plan you never even heard of, and the new plan may even be offering you a lower rate than you negotiated with the original network you contracted with. Be aware of the danger of signing a contract with this kind of clause.

### **All Products Provisions**

These provisions mandate that the psychiatrist participate in all products that the MCO offers (current and future) on whatever terms the plan dictates. You don't want to sign on to anything that's not specifically defined in the contract. Several states have legislation limiting the use of these provisions.

### **Evergreen Renewals**

An evergreen clause allows the insurer 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.

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

Some contracts contain provisions that prohibit a psychiatrist from making any negative comments about the company or from advising a patient that another plan might be better. Other banned topics may include non-covered treatment options, financial incentives, or adverse plan decisions—any of which may put you in an ethically dicey situation.

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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.

Note that many states now have laws that prohibit these clauses.

### **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 all materials mentioned in the contract.

### **Indemnification and “Hold-Harmless” Clauses**

Some contracts require that the psychiatrist hold the insurer harmless and indemnify the plan 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 insurer to substitute language such as, “[Name of insurer] 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.” Your malpractice carrier should be able to advise you about this.

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.

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

If your contract contains termination-without-cause provisions, make sure that the clause is mutual, allowing both you and the insurance company the option to terminate the contract at any time with prior notice (usually sixty to ninety days). You should ask about any appeals processes that may exist, so you are familiar with the process if the company 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

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aspects of a contract affected by changes in laws, regulations, or court interpretations.

### **ADDITIONAL TIPS**

- Review the contract for any 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. These topics are frequently covered in the provider manual, which you should review before the execution of a contract.
- Be aware that contracts give insurers the right to conduct quality assurance audits. This is standard, and if you do appropriate documentation, will not create any problems for you.
- Pay attention to how the insurer will authorize services in an emergency. Most companies 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.
- Know when your current contract expires and consider renegotiating if you feel you are not being adequately compensated. You have nothing to lose.

### **ASK QUESTIONS AND NEGOTIATE**

Contract negotiation may be possible, especially these days when there is such a shortage of psychiatrists on insurance panels. If you cannot negotiate, be sure to ask questions on the above and any other issues that arise from reviewing the contract to make sure you are not entering into a contract that you can't live with.

### **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 insurance company that do not agree with the contract

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should be incorporated in an amendment that conforms to the contractual requirements.

### **IN CONCLUSION**

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. Don't sign any contract until you're sure you thoroughly understand what you're agreeing to.

The AMA has created a detailed model managed care contract, with annotations that explain the reasons for including its various components. In an ideal world, this is the contract you'd be presented with when you join an insurance network. Reviewing this document will give you a very clear idea of what the various parts of a contract mean and what you should look out for. The model contract is available on the AMA website at [http://www.ama-assn.org/ama1/pub/upload/mm/368/mmcc\\_4th\\_ed.pdf](http://www.ama-assn.org/ama1/pub/upload/mm/368/mmcc_4th_ed.pdf).