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Cutting Out the Middleman: Physicians Can Contract Directly with Employers–A Viable Alternative to Adversarial Managed Care Agreements

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HMOs, PPOs, and other managed care "middlemen" control the means by which most physicians do business with employers. As physicians face dwindling reimbursements, greater practice restrictions, and increased pressure to sign adversarial middleman contracts, interest in direct contracting has grown.

This article introduces direct contracting as an important alternative to commercial managed care agreements; cites the key advantages and process of direct contracting; and offers practical recommendations for helping physician practices successfully negotiate direct physician/employer agreements.

Key words: Physician contracting; managed care; physician/employer agreements.

Editor's Note: *This article presents an interesting alternative approach to managed care contracting. It may be applicable to situations and locations where practices may have special leverage in such contracting.*

This article is not intended to provide legal advice nor negotiating guidelines but simply to alert readers that the possibility of direct contracting may exist. Legal counsel should be sought in any negotiations and contracting.

INTRODUCTION

Cutting out the middleman is an idea as old as business itself, affording the buyer and seller direct access to each other, without the usual costs, interference, or ulterior motives of an intermediary. Yet, when it comes to managed care, commercial HMOs, PPOs, and carriers still control most of the means by which doctors and employers can do business together.

Managed care middlemen dangle their huge memberships in front of physicians, relentlessly pushing adversarial contracts containing ever-dwindling reimbursements, greater practice restrictions, and little choice but to sign. Meanwhile, they dangle huge physician networks in front of employers, relentlessly pushing their networks as the only means for managed care savings and access.

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However, as problems mount in the managed care industry and public criticism escalates, both corporate benefit departments and physicians are finally taking a

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closer look at cutting out the middleman and doing business directly with each other. For physicians who have accepted the worst choice of having no choice (but to sign middleman agreements), direct contracting represents the chance to regain control over the practice of medicine. For employers facing accelerating health care costs (estimated to produce a 76% increase in costs over the next five years, according to a recent Hewitt Associates survey), plus double digit premium increases and declining service, direct contracting represents the chance to regain control over health plan expenditures and improve employee satisfaction.

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The following information and insights are based upon actual direct contracting conducted by A.J. Lester over an eight-year period on behalf of major self-funded corporations, including Perdue Farms, SYSCO Corporation, U.S. Cellular, Global Marine, Blue Bell Creameries, and Randalls Food Markets (Safeway), encompassing direct agreements with nearly 100,000 physicians across 32 states.

ADVANTAGES OF DIRECT CONTRACTING

Though managed care middlemen don't want employers or physicians to know it, direct contracting offers many distinct advantages.

Win-Win Agreements

Unlike typical managed care agreements with dozens of pages of small-font legalese, direct agreements are generally short, readable, and protect both parties' interests.

Direct agreements fully disclose all financial and contractual terms to both parties.

Middlemen never disclose the terms of provider agreements to employers, nor the terms of the employer agreements to providers. Direct agreements fully disclose all financial and contractual terms to both parties. Nothing is hidden, so both parties win.

Healthier Reimbursements

Direct agreements compensate the physician fairly without compromising potential savings for the employer. Reimbursements can be based upon reduced fixed fees or simple discounted fee arrangements. Because there is no middleman "cut" or monthly network access fees, overall costs are typically lower than commercial networks, so employer-owned networks can actually save claim dollars and reduce plan costs, while still providing higher physician reimbursements.

Opportunity to Negotiate Better Terms

Managed Care Organizations (MCOs) develop "best practice" reimbursement schedules with standard pricing based on demographics, specialty, or utilization, from which they allow little deviation. Their inflexibility precludes physicians from negotiating specific reimbursements without negotiating the entire fee schedule or methodology.

Direct agreements inherently use fair reimbursement schedules to be widely approved quickly, without additional modifications. Consequently, employers are more flexible with regard to occasional reimbursement modifications. Physicians who are aware of practice costs and prevailing reimbursements, and who possess percipient negotiating skills, can negotiate better contracts directly with employers than with MCO middlemen.

Stronger Direction to Network Providers

By owning the network and controlling the health plan, employers can more effectively direct, or steer, employees to network providers. Direct networks are designed to meet specific employer needs in designated employee locations, so providers can more accurately anticipate prospective patient volume and can ultimately count on the employer's support. Managed care companies build networks first and then try to fit employers into them, disregarding conflicting employer needs, and creating steerage inconsistencies and service problems.

Under conventional managed care agreements, health plans include some cost-containment and strict administrative requirements. To contain costs and enhance profitability, commercial networks use restrictive contract requirements to micromanage the delivery of medical care. Direct agreements generally have fewer limitations on what doctors can and cannot do, as long as they use sound medical judgment, which means there is less second-guessing of physicians' treatment decisions.

Direct agreements create and sustain the employer's support of physicians' decisions, not the continual questioning of them. For employers and physicians working together under direct contracts, the goal is always optimum patient health.

Less Staff Time and Resources Spent on Administration

Because direct contracts typically are based on simple, self-funded plan designs, they contain fewer rules, restrictions, and filing requirements than conventional HMOs or PPO agreements. Therefore, the physicians' office staff do not waste time determining what treatments and procedures are covered and whom to call when problems arise. Considering the time usually spent by physicians' staff on administering multiple (and sometimes conflicting) managed care agreements, each replacement of a commercial agreement with a direct agreement can result in a huge savings of staff time and, therefore, money. Direct access to employers also facilitates quicker problem resolution and helps establish a more productive working relationship between the parties.

A Welcome Change from Commercial Managed Care Agreements

Physicians express approval of direct contracting for many reasons, but mostly because direct agreements are not HMO or PPO agreements. Direct contracts straightforwardly establish a beneficial business relationship between physician and employer, making these agreements a welcome and revitalizing change from the complex, contentious, and one-sided contracts often forced upon providers by managed care middlemen.

THE PROCESS OF DIRECT CONTRACTING

The inherent advantages of direct contracting make it a strong, stable, and valuable source of patient revenue. The entire concept of direct contracting has been obfuscated by other managed care issues, so it is understandable that practice managers, physician management firms, and consultants often overlook its potential in lieu of traditional middleman approaches. But, because direct agreements can prove to be a vital part every practice's managed care mix, physicians themselves should initiate a closer look at the process of direct contracting.

Review Current Managed Care Agreements

In approaching direct contracting, physicians should first review their current managed care contracts and decide which ones are financially or administratively disadvantageous. The willingness to cancel, or not renew, detrimental contracts provides important impetus, especially when the self-insured employers represented under those contracts can be approached directly. Physicians should also consider as potential direct contracting prospects those local self-insured employers that offer managed care benefits, but are dissatisfied with the service, or have little or no access to physician networks. Employers generally welcome direct agreements with physicians when other options are unavailable, especially when it helps solve service or access problems, or activates managed care benefits for employees who would otherwise have none.

Replace Disadvantageous "Middleman" Agreements

According to the widely publicized Commonwealth Fund Survey of Physicians' Experiences with Managed Care conducted by Louis Harris and Associates, 90% of American physicians surveyed have managed care patients, and half of physicians are contracted with five or more managed care plans. It is impractical, at best, for any physician to consider replacing all existing managed care agreements with direct contracts. Well-run commercial networks that offer reasonable physician contracts, reimbursements, and service, while providing employers with adequate savings and service should be retained. However, direct contracting should always be considered as a replacement for and an alternative to those agreements that are not serving the physicians' best financial or professional interests.

Understand the Response of Carriers and MCOs

Though direct contracting is gaining momentum among physicians and employers, insurance carriers and managed care middlemen are often too busy with their own problems or profit motives to pay much attention to direct agreements. Those who do notice tend to oppose it because, as middlemen, the whole concept of direct contracting cuts them out of the picture. Employers and physicians who raise the topic with commercial HMOs, PPOs, or insurance carriers usually encounter resistance to direct contracting or find they're being talked out of it.

Determine Whether Current Agreements Restrict Direct Contracting

While it is advisable to have all agreements legally reviewed, remember that commercial managed care agreements are written specifically to protect the middleman's interests. As such, they may include terms prohibiting physicians from contracting directly with employers. Physicians should never to sign an agreement containing such a clause or should negotiate the clause out. The HMO or PPO *employer* agreement may also prohibit direct contracting, though employers should be discouraged from signing such agreements. Essentially, employers and physicians should always retain the right to contract directly, regardless of other contractual arrangements.

Acknowledge Any Potential Conflicts of Interest

There's no reason why a physician, group practice, or IPA shouldn't approach local employers with the offer of a direct contract, but, from a practical standpoint, contacting employers directly may appear as a conflict of interest with other managed care arrangements. Carriers, HMOs, and PPOs may be actively pursuing as client the same employer with whom the provider is seeking a direct agreement. It's always preferable for the employer to initiate direct contracting through a company representative or experienced direct network consultant.

Demonstrate Willingness to Contract Directly, Even for Few Employees

The decision to contract shouldn't be based solely on potential patient revenue, but should focus on whether the concept of direct contracting makes business sense. True, the upside may not be huge when few employees are involved, but there's virtually no downside to a direct agreement either. Even in captive patient markets where doctors will get the patients with or without managed care, the only way employers can offer employees managed care benefits is through a network of contracted physicians. For doctors who disdain commercial managed care, the direct agreement guarantees that the employer won't have to turn to a commercial network to gain managed care access for employees.

Establish Balanced & Reciprocal Contract Terms

Although it's impractical to outline here all the necessary contractual terms, physicians should look first and foremost for balance and mutually beneficial financial terms in the agreement. The best direct contracts are short (five pages or less), concise, and establish a strong working partnership between the parties. They clearly acknowledge the health of the patient as the ultimate concern of both the employer and physician. A direct "win-win" agreement provides written assurance of the reimbursement, timeframe for payment, and exact terms for the provision of plan benefits and processing of provider claims.

Recognize Employer's Decision-Making Process

Sometimes, a local employer may express interest in a direct agreement, yet decisions on such matters may be made at a corporate benefits department located elsewhere. Many employers assume that if an MCO does not already have networks in certain areas, none are available. Where networks are available, the employer may be oblivious to physician dissatisfaction with these networks and their subsequent receptiveness to direct contracting. Most corporate benefits executives have no experience with direct contracting and may be unaware that direct contracting is a viable alternative. Physician support of and willingness to participate in direct agreements can bolster this viable alternative to the decisive advantage of both parties.

Support & Promote Employer Efforts to Contract Directly

Although the onus may still be on the employer to initiate the process, physicians can do a lot to help local employers understand the value of direct contracting. Through informal means, as well as through personal and professional relationships with key corporate executives, physicians can actively target strategic decision-makers at each major employer. Whether it is the CEO, CFO, or VP of Human Resources, physicians can introduce the concept of direct contracting and express their desire to negotiate "win-win" agreements. The employer can then initiate the actual process without jeopardizing the physicians' position with other MCOs. It is also advisable to refer employers to a qualified direct contracting consultant who can assist in the planning and implementation of the employer networks.

Initiate a Direct Agreement Yourself

Initiating a direct agreement can be as simple as having an attorney or practice management firm draft a simple buyer/seller contract and then approaching local employers with it. The American Medical Association website has an excellent Model Managed Care Contract [*http://www.ama-assn.org/ama/upload/mm/38/mmcmsa.pdf*] from which pertinent terms can be drawn for a direct agreement. Don't assume that practice management consultants or business managers will know about or suggest direct contracting as an alternative. Physicians may find it necessary to instruct their medical service organizations or consultants to actively seek out direct agreements with local employers. Another way to initiate the direct contracting is to contact the employer's benefit consultants or in-house benefits departments directly and express the desire for a direct agreement. If there is interest on the company's part, it can expend the necessary time and resources to develop a mutually beneficial direct agreement both parties can approve.

BECOMING AWARE

Direct contracting is not so much a well-kept secret as much as it is a little known and often misunderstood area of opportunity of which more physicians need to be aware. The fact is that commercial HMOs and PPOs are not the only way that physicians can gain access to employer-payers, especially when direct agreements with community employers can be negotiated reasonably, at fair terms, and with the greater likelihood of a more stable and advantageous relationship.

With so many contracts already in place, middlemen probably will always be a big part of the commercial managed care picture. However, physicians can do a lot to balance their managed care involvement and control their own destinies by remaining open and receptive to direct contracting, being willing to replace disadvantageous middleman agreements with direct contracts, and supporting and encouraging local employers to contract directly. This opportunity will certainly grow as more employers realize that HMOs, PPOs, and other conventional approaches are not the only way to provide managed care access, especially when so many physicians will readily do business under mutually beneficial direct agreements. ■