



SMA ADVISORY ON MANAGED CARE CONTRACTS

(First issued on 25 March 2009)

PREAMBLE

The leadership of the SMA is concerned with several issues in managed care. As a result we have crafted this advisory with the help of our legal advisors and the main thrust of this advisory is to target the managed care contract that doctors sign with managed care organisations (MCO).

We hope that the doctor will understand his obligations better and be mindful of the pitfalls and areas of difficulty that he faces when he participates in these schemes.

As the advisory deals with the contracts that are signed between the MCO and the doctor, it tends to be more technical in nature. However, what is critical are the issues of transparency or lack thereof that permeate the contractual relationship between the doctor, patient and MCO.

The lack of transparency is seen in prohibitions against doctors contacting corporate clients, complex fee structures with opaque methods of calculating doctor's fees and gag clauses that forbid doctors to seek help from any agency or lawyers for non-payment.

The MCO erects a wall between the doctor, patient and the corporate client. There is restriction in the information flow such that the patient or the corporate client does not know how much of their health dollar goes to the doctor and what portion is retained by the MCO.

In the same light, patients and corporate clients are not aware of the restrictions placed by the MCO on the doctor's professional practice.

We hope that this advisory will allow you to understand the managed care contract better and shed some light on the opaque nature of these contracts.

Please note that this advisory is not meant to replace the need for or provide specific legal advice on any particular contract.

(A) Doctor's Obligations

The primary duty is to the patient regardless of the contractual terms

Basically this means you will still be accountable even if the contract has made it difficult or not possible for you to fulfill your role/duty to the patient. This extends to situations where you are restricted to certain hospitals, laboratories or panels of specialists. It does not matter if a contract has oppressive rules and regulations that impede your practice, you are still held accountable to fulfill your care to the patient.

The doctor cannot refuse to see the patient

Under terms of the contract, you may be obliged to see the patient even if there are reasons to oblige you otherwise. Although, in practice, most of us would not refuse to see patients, this is actually your right to decide. This right is taken away from you in many contracts. You should be convinced yourself that you can accept this condition from the MCO.

Breach of confidentiality

There are clauses that require you to release information to the MCO by way of reports or complying with audit processes. Some contracts require you to make available case records to verify the disputed claims. However, there may be no stated obligation by the MCO that it has obtained the necessary consent from the patient. This may result in breach of patient-doctor

confidentiality. Make sure that the contract states that the MCO has obtained the relevant consent for the release of confidential information from the patient and will provide confirmation of the same to you.

“Not medically necessary”

There are situations where the MCO decides what is “not medically necessary”. You should be the one to decide because you are still responsible to the patient.

Referral to non-participating hospital/specialist

Some MCO contracts require you to seek permission from the Medical Director for admission of the patient to a non-participating facility even though participating facilities may not have the capability or expertise to handle the a patient’s condition. Be mindful that there may not be a corresponding duty on the MCO to respond promptly to you. You should be aware that you are responsible for the suitability of the referral and care of the patient, regardless of any third party delays.

B) MCO’s Obligations

Referral to hospital

You may be asked to tell your patient when he is referred to a hospital that he is responsible for the hospitalisation bill. This is not your job but should be an obligation undertaken by the MCO as well as the hospital; the latter should also provide financial counselling as required under Regulation 11 of the Private Hospitals and Medical Clinics Regulations.

Payment obligations

MCOs have varying payment obligations; some contracts are worded in a manner that the MCO is under no legal obligation to pay you for the services that you rendered. There are also contracts that passed the risk of non-payment by corporate clients to you even though you have already provided the service.

Prohibition against doctors contacting corporate clients

One contract has a blanket restriction on the doctors communicating with the corporate clients. There should be avenues for doctors to communicate with the human resource personnel of corporate clients (in addition to open communication between you and your patients).

C) Administrative Costs

Verification of patient’s identity and co-payment status

Most MCO contracts state that it is your responsibility to verify the identity of the patient and whether they are covered by the health plan. You may also have to verify which patient needs to co-pay and which patient does not need to do so. You should be aware that any oversight and error on your part will result in non-payment of the services you rendered.

Setup, infrastructure and training costs

There is a cost to servicing MCO patients involving computers, broadband access, software and training for the staff. The contracts are commonly silent on who is to bear these costs.

D) Payments

Fee structures

Many contracts have fee structures which are complex and the method of calculating fees appear unreasonable. There are also clauses that allow the MCO to deduct their administrative charges, bad debts, overheads and other charges before paying you.

Some contracts provide that the MCO can unilaterally amend the fee structure without informing you or by giving you 30 days notice in writing. Look out for contracts that do not even provide a specific fee structure.

There are also contracts that allow the MCO to audit payment claims. This may interfere with your discretion in relation to your fees/charges.

These clauses may have the effect of “outsourcing” a MCO’s business risk to doctors. You should ask yourself if you are willing to bear that risk.

Caps and budget limits

Some contracts provide for an annual budgetary limit. These are limits and caps that may impede your professional practice and compromise your primary duty to the patient. There are exclusions of certain services (“not medically necessary”) that you have to verify before seeing the patient.

Credit terms

MCOs may extend credit terms to their corporate clients and this will affect your payment terms. Do look out for clauses that state that the MCO is also not responsible for bad debts or recovery of bad debts, as the consequence of bad debts will then have to be borne by you.

Late payments or non-payments

MCO contracts may contain gag clauses such that you are forbidden to seek help from any agency or lawyers for non-payment, while there is no obligation for the MCO to pay you in the event of customer default. There may also be contracts where there is no deadline imposed on the MCO to pay you. Look out for contracts that impose a very short time frame (i.e. 7 days) for you to dispute your claim reimbursement. You have to ask yourself if that time frame provided is sufficient time for you to identify all possible disputes and to file your dispute claims with the MCO.

Submission of claims

MCOs require you to submit claims within a given time period. This may range from 3 days from the end of the calendar month to 90 days later. 3 days may be an unreasonable time frame and you should consider what is a reasonable time frame for you.

A MCO contract may oblige you to bear the cost of data entry after the deadline given. If the MCO is unable to key in data before the deadline despite your timely submission, the contract may be written in a way that you are still liable for the costs.

E) Warranties and Liabilities

Warranties

Look out for unreasonable warranty clauses. For example, there can be a requirement by a MCO that requires you to warrant the absence of viruses in your computer in the future. This is a requirement that is unreasonable as it is difficult for you to warrant that your computer will not at any time in the future be subjected to viruses.

Liabilities

Some MCO contracts have clauses to limit their liabilities but there is no reciprocal limitation of liability for the doctor. This is essentially an uneven playing field. There may be a clause which states that where there is more than one doctor in the practice, the doctors are jointly and severally liable for any claims made by the MCO.

Indemnity

Several MCO contracts have clauses where you have to indemnify the MCO and its corporate clients for all actions, claims, demands, losses, costs and expenses arising out of medical services rendered or negligence. This is clearly not reasonable as there may be certain acts/conduct of third parties that are not within your control.

F) Termination and Dispute Resolution

Termination

MCOs have termination clauses that can terminate your services immediately for cause by breach of contract but that right may not be given reciprocally to you.

Some MCO contracts are silent on their obligation to pay you for services rendered when the MCO invokes the termination clause.

Dispute resolution

Some contracts provide for arbitration in case of disputes but arbitration can be quite costly and may not be worth the effort and costs entailed especially when the dispute only involves small sums of money. Most contracts are silent on dispute resolution. Be mindful of MCO contracts which state that the MCO is the final arbiter of disputes and that the MCO's position on the dispute is final.

This advisory is by no means exhaustive. It highlights obligations as well as difficulties that you should consider before you decide to join or withdraw from a managed care scheme.

So, the most important question you should ask before joining a managed care scheme is this:

How important is this contract to your practice?

- What does this contract mean in terms of revenue and expenses?
- How would you replace any patients and/or revenue you might lose?
- Would the loss of revenue and/or be compensated by freeing up resources and time to service private patients?
- Are there alternatives to this contract?