

## MANAGED CARE CONTRACTS: WHAT YOUR SLEEP LAB SHOULD CONSIDER

by Duane Johnson PhD



Before a sleep lab signs a managed care contract, the lab should carefully consider proposed contract terms to determine its ability to economically deliver health care services and avoid potential pitfalls. Most managed care contracts attempt to share some of the financial risk for the provision of health care services with the sleep lab through per diems, per case rates, capitated payments, withholds, or some other forms of risk-based pricing. There has been a shift in fee-for-service to managed care contracts. Fee-for-service has been an arrangement where patients pay sleep labs, physicians, hospitals and other health care providers for each service rendered and then reimbursement is sought from a private insurer or the government. Managed Care Organizations (MCOs) and managed care contracts have changed how sleep labs provide care to patients and receive reimbursement.

It is critical that sleep labs actively negotiate their payor agreements and have a clear understanding of what a managed care contract means to their lab in terms of revenue and expenses. Prior to signing a payor agreement, sleep labs should understand key Managed Care Organizations (MCO) and models, contract negotiation issues, deal points, payment methodologies, managed care traps, and dispute resolution mechanisms.

I interviewed Jayme Matchinski, Esq., a partner at Hinshaw & Culbertson LLP, in Chicago, who has specific expertise with sleep labs and managed care contracting. Here are her answers to questions I am frequently asked as well as key information about managed care contracts.

What are the steps a sleep lab should take before signing a Managed Care Contract? Before a sleep lab begins negotiating its managed care contracts the lab should gather background information regarding the MCO, conduct due diligence, and identify key objectives to determine the deal points. Core contract issues to consider include: identification of covered services, the definition of medical necessity, financial arrangements, the parties' obligations pursuant to the health plans, and termination rights. Sleep labs should identify deal points that relate to certain objectives which may include: protection or increase of patient base and market share; development of a managed care network; creation or protection of revenue stream; development of a relationship with specific payors; and alignment with other providers and payors in the market.

What if the MCO is unwilling to negotiate the terms of the Managed Care Contract? If a MCO presents the lab with a managed care contract on a take-it-or-leave-it basis you should proceed cautiously and consider this a red flag that may be a warning about a difficult future payor/provider relationship and unfavorable contract terms. If a contract is presented as non-negotiable, this should not prevent the lab from attempting to negotiate objectionable provisions. Carefully read and understand all contract terms prior to signing a managed care contract. Most managed care contracts contain "boilerplate" language that the MCO has drafted and included in all of its standard contracts.

Are MCOs really unwilling to negotiate the terms of Managed Care Contracts? No, most MCOs are willing to negotiate managed care contracts. Historically, MCOs have not had to negotiate contract terms because health care providers have signed the contracts without proposing revisions or questioning the contract terms. Sleep labs are typically in a good position to negotiate such contracts due to the specialized services provided and utilization of sleep medicine within the continuum of care.

Are there certain contract terms that should be in the lab's managed care contract? Contract terms that should be found in all managed care contracts include "medically necessary" and "covered services" definitions. Be alert for managed care contracts that define "medically necessary" according to the plan's own arbitrary cost criteria and use such language as "least costly alternative." Sleep labs should also be cautious of contracts that leave medical necessity decisions in the hands of the health plan's medical director. Health plans will generally pay for "covered services" that are medically necessary. Many managed care contracts either poorly define "covered services" or include a definition which works to the advantage of the health plan by giving wide discretion to the health plan to deny requested services that are not covered. A health plan should have an easily accessible system for sleep labs to confirm that a service is covered when a patient is in the office. This enables the sleep lab to inform the patient if the service is not covered and that the patient will be responsible for payment if the service is performed.

How are sleep labs paid under managed care contracts? When reviewing a proposed managed care contract the sleep lab

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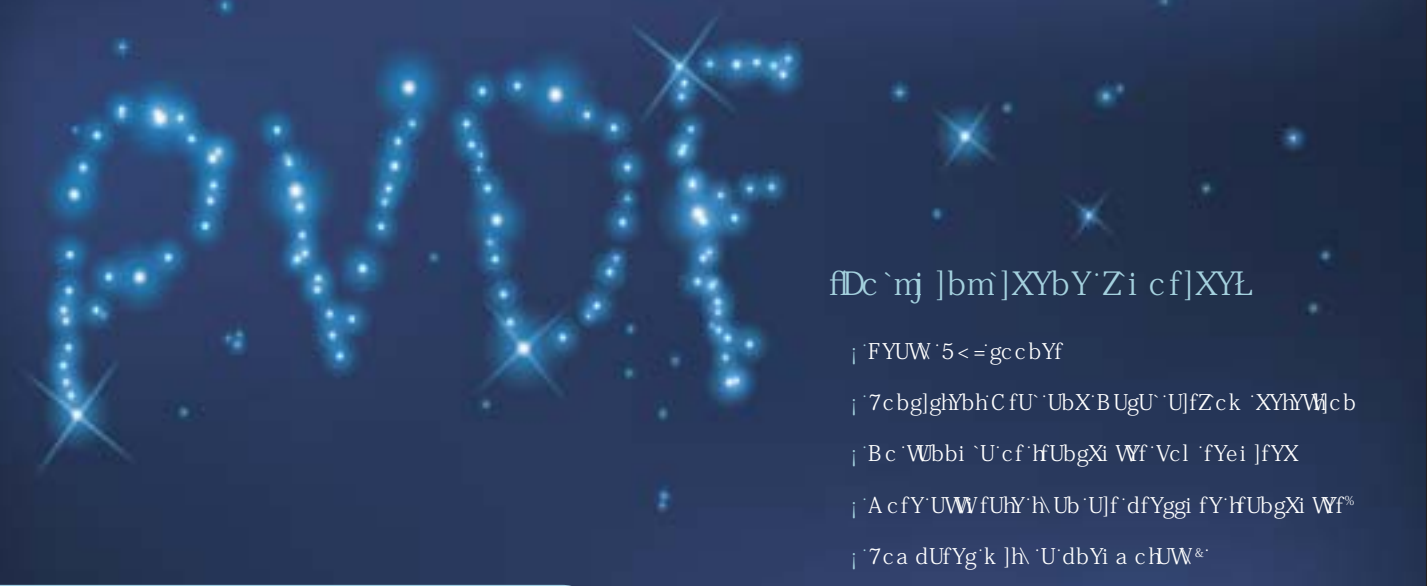
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should determine what the exact reimbursement will be under the contract and if the reimbursement is sufficient. Specifically review the contract to ensure that it provides the lab with enough information to determine what the lab will be paid for the services provided. Make sure that the lab's contract includes a comprehensive fee schedule that includes detailed information on payment methodology, codes and guidelines. The lab should also figure out the costs to provide the services required under the contract. Make sure that your lab does a cost benefit analysis to ensure that the proposed managed care contract is a good deal for the lab and will not be detrimental to the lab's bottom line. If the managed care contract does not compensate the lab beyond its practice expenses, the lab may lose money on the contract.

Are there any pitfalls to managed care contracting that sleep labs should avoid? There are many pitfalls to avoid as your lab negotiates its managed care contracts. The following pose potential risk and require special attention during negotiations:

**Prompt Payment and Balance Billing:** Review your state law that governs your contract, recent court decisions, and legislative trends. Make sure you define "clean claim" in your contract. Include a time limit for payment upon receipt of a clean claim.

**Renewal Provisions:** Include a provision that fees will be negotiated separate and apart from the renewal terms of the contract. Some managed care contracts are "evergreen" contracts that automatically renew every year. Carefully review the term, track renewal terms, and termination provisions of your contract.

**Reimbursement for Services:** Identify the reimbursement methodology and make sure it is clearly spelled out in your lab's contract. There are several reimbursement structures which are used by MCOs and your lab should determine how the risk is shared between the MCO and sleep lab before signing a contract.

**Protection of Confidential Information:** Include provisions regarding HIPAA compliance and protection of protected health information. Make sure to also review state regulations regarding protection of patient information and medical records to ensure that the managed care contract is in compliance with all applicable state regulations.

Should your managed care contract contain a dispute resolution provision? Your sleep lab's managed care contract should provide specific procedures to appeal a reimbursement decision and resolve any disputes that may arise between the parties. If your lab is in a dispute with a managed care payor, there are certain steps that your lab should consider to resolve the dispute, including: reviewing your contract for possible areas of dispute related to coverage, claims, and payment; determining whether the payor has received all required documentation and confirming that your lab has filed a "clean claim;" initiating all applicable appeal or review procedures for claim denials; identifying dispute resolution mechanisms, including interim determinations or appeals, negotiations, mediation or arbitration; determining whether mediation or arbitration results are binding or non-binding; setting time frames for dispute resolution; and utilizing state and federal statutes to receive timely payment, including state prompt-pay statutes and ERISA as applicable.

It is imperative that sleep labs carefully chart their course when negotiating managed care contracts. Sleep labs should plan to achieve identified deal points and avoid managed care traps. Make sure you understand the contract provisions, include safeguards in the contract to protect your lab, and know your lab's rights and remedies if a dispute arises between the parties.

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