

New Wave of ‘One-Sided’ Managed Care Contracts Could Lead to Payment Strains for Nursing Homes

By [Maggie Flynn](#) | November 30, 2020

Some aspects of the nursing home world do not change even during a global pandemic, and that includes the need to manage relationships with multiple payers.

Several managed care organizations (MCOs) are now sending in their new contracts to skilled nursing providers as old agreements expire, Chad Bogar, the founder and CEO of the law firm sb2 Inc., told Skilled Nursing News on November 13.

And it's critical that SNFs review the details of the new agreements, since many of the contracts are "much more onerous and one-sided, seemingly designed to ensure that a significant portion of provider services go uncompensated," Bogar said during an sb2 webinar held on November 12.

"I've never seen contracts like this," he said on the webinar. "They're so much different than the earlier ones." One provision, as an example, includes a requirement that when providers execute a new agreement with the MCO, all claims against the MCO under the old agreement "vanish, are forgiven — they don't exist, you're settling that, it's done, you can never come after us ever," Bogar said on the webinar.

Part of this is because MCOs, which are relatively new on the health care scene, are gaining experience and a deeper understanding of where they need to tighten their contracts, Bogar said.

This trend means SNF providers have to understand the provisions in their contracts that cause the greatest percentage of lost Medicare or Medicaid revenue, so they can "collectively push back during the negotiating process," he explained on the webinar.

"You want health care associations to be behind this," Bogar noted. "There is power in numbers." Some of the critical provisions for providers to focus on in the contract include:

Notice provisions

These provisions cover the notice that the MCO must give to providers regarding a range of changes, from tweaks to billing codes to the alteration of payments to the appeals process. The new agreements sometimes consider "notice" as a posting on their website or in a newsletter, rather than a certified letter or a direct message to a specific person.

When negotiating notice provisions with MCOs, it is imperative that SNFs stipulate they go to a particular person or department to ensure they are not lost, Bogar said on the webinar. Any communication of material change that could result in the provider losing money needs to be streamlined, he emphasized.

"To me, this is one of the most important issues," he said on the webinar. "Because if I don't know what is going on, if I don't see it ... I don't want it just to go to the facility. I don't want it on [the MCO's] website. Who has time to read their website? Have you ever been to an MCO website?"

Recoupment notices

In recoupment, an MCO could revoke its authorization of care for a resident after the care has been provided, and then has the right to recoup any payments already made. [cont'd.]

The problem here are twofold. The first is that these notices do not grant due process rights to the SNF provider, with no hearing or any other step, Bogar said.

“Just self-help recoupment, and then you can fight it out with them later — if you get notice,” he said on the webinar. “If you don’t get notice of it until it’s too late, you’ve blown the appeal deadline and then you’re out, assuming that they gave proper notice.”

In these cases, the resident is sometimes still in the facility, even though the MCO has withdrawn its authorization for skilled care. And even if there was somewhere to send the resident whose care is no longer covered, many states have issued orders banning resident discharges.

When negotiating recoupment provisions, Bogar advised SNFs to ensure those clauses are in compliance with state practices. That means SNFs get a hearing “to argue it out,” he said on the webinar.

Rate adjustments

Medicare reimbursement rates will adjust each year, and for states using MCOs for managed Medicaid, there will also be adjustments to these rates. But the new MCO agreements sb2 is seeing do not necessarily pass those changes through to providers until the MCO makes the change.

The new MCO agreements frequently make use of the phrase “the latter of” for this provision, which means “whatever happens last, that’s the effective date that [the MCO] going to start paying you the increased rate,” Bogar explained on the webinar.

In this case, providers should negotiate to have rate increases take effect retroactive to the effective date by either the Centers for Medicare & Medicaid Services (CMS) for Medicare, or the state for Medicaid. They also need to be on the alert for any rate reductions.

Discontinuances

Some MCOs are not providing any care plans or steps for care continuation if a resident improves enough that they do not require skilled care.

This comes down to provisions required by the master contract that each state has with MCOs — approved by CMS and the state — that contains the provisions to which MCOs must adhere. sb2 has discovered that provisions related to care plans or continuations of care are not included in these new MCO agreements with providers, Bogar said.

In the fee-for-service world, notice is given for discontinuing care or redetermining the authorization of care if a resident improves enough to no longer need skilled care. Appealing the discontinuance notice or redetermination notice allows the provider to be paid through the appeal hearing or decision on the appeal, Bogar explained.

But with MCOs, the withdrawal of the authorizations comes with no warning, and so Bogar emphasized the need to be aware of the state’s master contract provisions.

Start with the state

In all of these cases, Bogar believes the more aggressive provisions are the result of new contracts coming in as the old agreements expire, as the MCOs have gained experience processing claims governed under those retired contracts.

When it comes to negotiating with MCOs, the CMS-approved master contract with the state is the beginning, Bogar told SNN on November 13. While not all of the new provisions are bad, he explained that SNFs need to be alert to the provisions that will cause loss of revenue or the rendering of services that will not be compensated.

“What you do is you say: Okay, I’m going to look at this provision. I’m going to say, is this workable? Does this comply with what CMS has approved in the master contract?” Bogar told SNN. “And then you go from there. If it doesn’t, then you say: I’m going to alert CMS about this. I’m going to alert whatever state organization or state agency oversees this.”