

What You Need to Know Before Signing Contracts

Legal contracts are a fact of modern life and an important part of running a medical practice. In their basic form, contracts are legally binding agreements between two or more parties. They are probably one of the most common legal arrangements you'll encounter in your medical practice.

The purpose of most contracts is to avoid fraud by requiring written proof of a specific agreement. Contracts must be clear and complete so that there is no misunderstanding about what the contract contains.

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It is important to keep in mind that contracts are enforced by the laws of the state in which the agreement was made. The law requires that the parties to a contract fulfill the commitments they have made to each other.

To be legally enforceable in court, a contract must contain three essential elements: a defined offer, acceptance by the parties involved and a consideration, which is something of value that is passing from one party to another. While there are verbal contracts, these will not hold up in court, so it is best to use written contracts for your arrangements. In addition, real estate contracts and sales of goods that are worth \$500 or more must be in writing to be enforceable.

Written contracts are important to medical practices because they show good documentation, says Max Reiboldt, managing partner with the Alpharetta, Ga.-based Coker Group, a national healthcare consulting firm. Although not an attorney, Mr. Rei-

boldt, a C.P.A., has reviewed many contracts for his provider clients over the years.

Contracts provide details on the obligations of each party involved in the agreement, including the deadlines for delivery and payment. With regard to payment terms, it is important that you know how much you must pay and to whom and when the payment is to be made.

Over the life of a medical practice, physicians enter into many legal contracts, from renting office space to managed-care participation. This chapter will cover what you need to know about the specifics of contracts before signing on the dotted lines.

Details to Consider

The contracts you sign should ensure that you are likely to get what you want in an agreement. Contracts are legally binding, and this means that courts can make you live up to the terms to which you agreed. In light of that, you should make sure that you carefully read and understand all the fine print and its implications before you actually sign any contract.

In many cases, you may need to have an attorney review your written contracts to be sure you have entered into a good arrangement. There may be provisions that you are not familiar with that could later cause you difficulty or even a legal dispute.

In addition to the obligations of the parties, contracts include the names and addresses of these individuals; the date the contract is signed; a short preamble that provides background on the agreement; how long the contract remains in effect; the details of the agreement; when payment is due if this applies; any warranties that are in effect, and the conditions under which the individuals involved in the contract can end the agreement. It also is very important to correctly identify the parties in a contract, using their correct personal and business names.

The body of the agreement details the rights and obligations of each party involved in the contract. It is important to understand how a contract can be changed and/or terminated.

Contracts generally include a section on damages if the individuals involved breach the contract. Your contract may explain how the damages will be determined. Be sure you understand

what happens if the parties fail to meet their various responsibilities and obligations.

In some cases, damages for nonperformance can include the cost of goods purchased and lost profits. Courts figure damages by calculating how much it would require to make the non-breaching party whole. Another way for the court to calculate damages is determining the lost profit of one of the parties if the other party fails to perform his or her responsibilities under the contract.

Your contract may also include a limit of potential liabilities of one party to the contract to the other, explains Allbusiness.com, a helpful Website on contracts for small-business owners. One common limitation of liability provides that neither party to the contract

will be responsible for indirect or consequential damages to the other party that arises from the contract.

Another provision may set the maximum dollar amount of liability of either party to the other under the agreement. For example, the parties may provide that no matter what happens in connection with the agreement, one will have no liability in excess of the amount to be received under the contract.

The actual signing of a contract is also an important step. By signing, you agree to all the provisions. If you write in minor changes to the contract, be sure that both parties put their initials next to these changes.

It is important to keep in mind that if the contract's provisions are breached, the other party in the agreement can generally move to have the contract enforced or to recover funds for not adhering to the agreement. Some contracts will explain how disputes will be resolved if they arise. After reviewing a contract, if the parties agree to the specifics, each will sign the contract, generally in duplicate, and keep a copy for his or her records.

There is also the ambiguities clause, points out AllBusiness.com. Such clauses say that any ambiguous language in the

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contract shall be interpreted according to its fair meaning and not strictly for or against any party to the agreement. "This is particularly important if you draft the contract because ambiguities in a contract are typically construed against the drafter," the Website states.

Sometimes it is a good idea to append attachments or exhibits to a contract. In addition to providing specific examples in certain cases, this enables you to use your base contract for many different transactions, while placing all specific documents that are particular to the transaction in an addendum or exhibit, says

Contract Terms Defined

There are many legal terms in contracts. That is why legal experts say you should review these terms before you sign any contract. According to attorney Richard D. Harroch, author of *Business Contracts Kits for Dummies (For Dummies, 2000)*, some important contract terms include the following:

■ **Boilerplate.** Standard contract terms usually found at the end of the contract that are important but do not reflect the essence of the deal. An example of a boilerplate term is a clause on payment of attorney's fees. An attorney's-fee clause in a contract generally explains that the party who prevails in any legal dispute that arises under the contract is awarded his or her reasonable attorney's fees and costs. In the absence of such a clause, each party assumes the cost of paying his or her own attorney's fees.

■ **Breach.** A claim by one party to a contract that the other party has failed to perform as required under the contract.

■ **Conditions.** Provisions of a contract that deal with the certain events happening or not happening. Conditions are like triggers that can cause some other part of the contract to come into effect.

■ **Force majeure.** That part of a contract that cannot be performed due to causes outside the control of the parties and that could not be avoided by the exercise of due care. This might involve natural disasters or a strike.

■ **Recitals.** Language at the beginning of the contract that describes why the parties are entering into the contract. Recitals are not always legally enforceable, so a well-drafted contract will always repeat significant terms in the body of the contract after words such as "the parties agree as follows." Legally, the contract begins after the recitals.

the Allbusiness Website. But remember to refer to the addendum or exhibit in the main contract.

Real Estate Agreements

If you rent or lease your office space, you have already signed a contract that outlines this arrangement for your medical practice. Your lease will stipulate the amount of rent you pay for the space, the term of the lease, the amount of operating costs charged to the tenant, responsibility for repairs and maintenance and any improvements to be paid by the landlord. The contract will also stipulate other charges that you may have to assume, such as payment for maintaining the common area, taxes that may be due and/or fees not included in the rent or lease payment.

You should pay close attention to the duration of the lease. “Most landlords will want a longer-term lease, such as two to three years, because they don’t want to find a new tenant every year and renegotiate the lease annually,” says Max Reiboldt, managing partner with Coker Group, a national health-care consulting firm.

It is important to negotiate some sort of cap on increases in the expenses that are not included in the monthly lease or rent payment, says Mr. Reiboldt. This is necessary because if there is no ceiling on controlling these costs, then the landlord is likely to charge significantly more each year, he maintains.

You should also pay close attention to the duration of the lease. “Most landlords will want a longer-term lease, such as two to three years, because they don’t want to find a new tenant every year and renegotiate the lease annually,” he says.

A long-term lease has both risks and benefits for tenants, writes attorney Richard D. Harroch, author of *Business Contracts Kits for Dummies (For Dummies, 2000)*. “The benefit is knowing that the premises are available at a predictable cost for the long term. The risk is that the company may outgrow the space, may need less space as its business contracts or is locked into paying what turns out to be above-market rent if demand for rentals subsequently declines.”

In addition, sometimes you will have the option to continue leasing or renting the space on a month-to-month basis after the term

of the lease expires. In other situations, you may have the right to renew or extend your lease when the term of the lease ends.

Your ability to negotiate changes to an office lease depends on how much leverage you have, which is determined by how badly the property owner wants you as a tenant. You may not have much leverage if someone else is trying to lease the same space, but if the space has been vacant for some time you may have more leeway in getting what you want.

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If you have room to negotiate, you may want to look at issues such as rent escalations, repairs and services. For example, you may be able to get the landlord to agree to no increases in rent or lease payments for the first 12 to 24 months.

As with all contracts, read the details carefully. Often real estate leases can be drafted to offer more protection to the landlord than to individuals renting or leasing space. For example, does the landlord have the right to end your lease early for his or her convenience?

If you are entering into a new lease, be sure you understand how the space is priced. A typical deal prices rental space by the square foot. Further, find out if the square-footage terms are stated in annual terms.

Here again it may be wise for your attorney or practice management consultant to review the contract before you sign it to make sure you will not be hit by surprises in the future.

If you are content with your location or if you are looking for a new one, Mr. Reiboldt recommends trying to obtain some ownership in the property. "This way, physicians will have long-term equity, and the property provides depreciable assets that can be written off over an extended period," he explains.

There are some drawbacks to owning, however. Small commercial office buildings can be difficult to rent or sell, and the management of the property can be costly and time consuming. OfficeFinder.com, a national referral network that assists busi-

nesses in commercial property transactions, offers the following factors to consider when you are deciding whether to buy or lease office space:

■ **Cash outlay.** If you are planning to purchase an office, you can expect to make a down payment of between 10 percent and 25 percent of the purchase price, depending on the lender and your credit. This is significantly more than you would have to put up on a lease, which typically calls for the first and last month's rent.

■ **Growth considerations.** If your practice is growing, you may find that leasing offers more flexibility to accommodate that growth. Conversely, if your practice is mature and stable, buying office space can help you fix your costs for the long term.

■ **Property management.** If you own office space, it needs to be managed, especially if you are renting out a portion of it. You can hire a management firm to handle this or do it yourself, though it will be very time consuming.

■ **Appreciation.** Buying office space is an investment. If the market in your area is healthy, your property may appreciate in value. Keep in mind that you may need to hold onto it for 10 years or more to realize a significant gain.

■ **Tax factors.** Lease payments are usually fully deductible, but many expenses of owning office space must be written off over longer periods of time of up to 39 years. Have your tax professional analyze the implications of a purchase versus a lease.

Employment Contracts

An employment contract expresses the terms and conditions of an employment arrangement. It is agreed to by both the employer and the employee. If you have joined a large medical practice or other healthcare facility as an employee, you should be sure to understand the details of any employment agreement you sign. In addition, if you are hiring employees for your practice, you may have to draft an employment agreement or contract for both of you to sign.

Before signing an employment contract, most organizations will issue a letter of intent, which is an offer of employment, Mr. Reiboldt says. This letter documents key terms and conditions that will be in the employment contract. "The contract is more detailed, but we find the letter of intent is a great tool to get all

the key points out of the way,” he says.

Mr. Harroch points out that employment agreements generally include the job description; the employee's title and responsibilities; the length of the agreement; salary, bonus and benefits; when the employee can be terminated for good cause; the employee's confidentiality obligations, and where and how any disputes will be handled.

For the most part, employed physicians are paid a straight salary or salary plus incentive such as a percentage of revenue. According to NewPhysician (www.newphysician.com), an on-line resource of career-related information for physicians published by healthcare recruiting firm Merritt Hawkins & Associates, a typical production-based bonus arrangement may call for you to be paid 50 percent of all billings or collections after you bring in revenue equal to your salary plus overhead. “There should be some expectation (though it may not be put in writing) as to what your gross will be when salary and production are combined,” the Website states.

According to Merritt Hawkins's latest survey of physician recruitment incentives, 10 percent of the searches conducted by the firm in 2004-2005 offered straight salary; 55 percent offered salary plus bonus, and 35 percent offered an income guarantee. An income guarantee ensures that the physician will earn a certain amount of income per month, after practice expenses.

Typically, an income guarantee is offered when the physician is being recruited as an independent contractor by a hospital or health system because of a need in the community, according to NewPhysician. “The income guarantee is, in fact, the hospital's

What Benefits Should Physicians Expect?

In its latest survey of physician recruitment incentives, Merritt Hawkins & Associates reports that 99 percent of the searches conducted by the firm in 2004-2005 include paid relocation. This is higher than the percentage offering health insurance (92 percent), malpractice insurance (93 percent) and retirement plans (72 percent).

Other benefits offered include paid continuing medical education (93 percent), disability insurance (74 percent), signing bonuses (46 percent) and educational loan forgiveness (14 percent).

way of saying it knows there is a need for another physician and they are willing to put their money where their mouth is,” the Website states. “The hospital may be confident that a need for your services exists based on a community physician needs assessment it has conducted.”

If you have negotiated an incentive plan as part of your compensation package, be sure that the contract clearly explains the details of the plan, says Mr. Reiboldt. For example, when and how is the incentive to be paid? Further, make sure that you understand the specifics of all other benefits you will be receiving.

As with all contracts, you may wish to have an attorney review an employment contract to be sure there is no unexpected or suspi-

cious language that could work against you. In addition, practice management consultants can assist you by reviewing the various terms of an employment contract to make sure that income, benefits and other provisions meet current market expectations.

Check to see if the contract contains what is called an “evergreen provision.” These provisions can be helpful because they mean that you don’t have to renegotiate the entire agreement every year. An evergreen provision automatically renews after a specified time period, usually one year, writes Michael R. Burke, J.D., in a June 2003 article in *Family Practice Management*. In addition, if your contract contains a without-cause termination provision, you or the employer is free to end the agreement without cause by providing prior written notice.

In addition, some employment agreements will include language stating that certain provisions (such as the benefits you receive or expenses the employer will reimburse) are to be determined by the employer “in its sole discretion,” writes Mr. Burke. If you sign such a contract, your employer can modify these terms at any time without your consent. To deal with this problem, he recommends negotiating to have this provision removed or to

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have certain benefits and expenses specifically exempted from it.

Many physician employment contracts contain non-compete clauses, also known as restrictive covenants. A non-compete clause enjoins a doctor from practicing his or her medical specialty within a specified geographic area for a period of time after leaving the practice. Employers include them in their contracts

The enforceability of restrictive covenants in physician contracts has been a frequently litigated issue, according to the AMA. Courts typically rule that non-compete clauses are valid and enforceable so long as they are reasonably tailored in terms of scope and duration to protect a legitimate business interest and are not found to restrain trade.

to keep partners from taking patients out of the practice if they leave voluntarily or involuntarily.

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Dr. Patrick C. Alguire, director of education and career development for the American College of Physicians (ACP), recommends that doctors review the duration and restricted area of the covenant. A duration of one or two years is typical; be wary of contracts that require longer terms. Some covenants restrict your ability to practice in an unrealistically large geographic area. Generally, the more specialized the practice, the larger the geographic restriction will be.

In addition, if the practice is set in an urban area, the geographic restriction is likely to be much smaller than that of a rural area. The AMA says that most practices use a mileage radius that covers 80 percent of the practice's patient base as the scope of its geographic restriction.

Dr. Alguire says that it is best to deal with the covenant up front and attempt to limit its impact in the event of leaving the practice, rather than contesting it in court. "Such action is costly in terms of time and money, and the outcome is not easily predicted," he states on the ACP's Website (www.acponline.org/)

counseling/restrictive_covenants.htm). “Some courts may uphold the covenant and forbid you from practicing in the area, while others may allow you to practice but only after compensating the practice for loss of patients.”

In addition, you are likely to find a waiver provision at the end of your contract, according to Mr. Burke. This provision enables your employer to enforce a term of your employment that it may have previously allowed you to breach. For example, your employment agreement may state that you must work a minimum of 32 office hours each week, but he or she may require you to work only 30 hours. If your employer decided you need to add the two extra hours to your schedule, he or she could say that the waiver provision in the contract means that he did not waive the right to require you to work the additional time.

Leasing and Purchasing Equipment

Leasing equipment has become more popular not just for business owners, but for medical practices as well. The Equipment Leasing Association (ELA) recently reported that leasing remains

Ten Questions to Ask Before Signing a Lease

The Equipment Leasing Association (ELA) recommends businesses ask the following 10 questions before signing a lease.

1. How am I planning to use this equipment?
2. Does the leasing representative understand my business and how this transaction helps me to do business?
3. What is the total lease payment and are there any other costs that I could incur before the lease ends?
4. What happens if I want to change this lease or end the lease early?
5. How am I responsible if the equipment is damaged or destroyed?
6. What are my obligations for the equipment (such as insurance, taxes and maintenance) during the lease?
7. Can I upgrade the equipment or add equipment under this lease?
8. What are my options at the end of the lease?
9. What are the procedures that I must follow if I choose to return the equipment?
10. Are there any extra costs at the end of the lease?

Source: *Equipment Leasing Association Website, www.chooseleasing.org.*

a prevalent financing vehicle for businesses acquiring equipment. ELA survey results show that new business volume in 2004 was over \$105.2 billion, which is an increase of 11.7 percent over 2003—an important measure of the growth of leasing. This survey found that the equipment types financed by leasing include computers, telecommunications, printing, medical and industrial.

Leasing equipment has become more popular not just for business owners, but for medical practices as well. Medical practices can lease office equipment, such as computers, copiers, furniture and filing cabinets, as well as medical equipment like blood analyzers and other lab equipment, exam tables, heart monitors and imaging devices, according to the Equipment Leasing Association.

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With a lease, a third-party funding source purchases the equipment you want on your behalf. You can use the equipment in exchange for regular payments made over a specific period of time. Keep in mind that by signing the lease, you are assigning your purchase rights

to the lessor, who already owns or who then buys the equipment.

ELA says there are a number of benefits to leasing. You can get 100 percent financing so there is very little money down; perhaps only the first and last month's payment are due at the time of the lease. In addition, leasing can allow you to respond quickly to new opportunities with minimal documentation and red tape.

If you wish to add or upgrade equipment during the lease term, you may be able to do so with add-on or master leases. If you think this is likely to happen, be sure to negotiate that option when you structure your lease program. Keep in mind that leasing payments are treated as expenses on your balance sheet; therefore, equipment does not have to be depreciated over five to seven years, says ELA.

There are a number of differences between a loan to buy equipment and a contract that you sign to lease equipment. For example, a loan requires the end user to invest a down payment in the equipment. A lease generally requires no down payment and

finances only the value of the equipment expected to be depleted during the lease term. In addition, if you lease equipment, you usually have the option to buy the equipment for its remaining value at the end of the lease.

Leases take into account that the equipment is worth something at the end of the lease term. This is called the “residual.” Residuals are built into lease pricing, usually making the lease payments lower than a loan. To compare lease products, it is better to compare monthly payments than to try to compare loan interest rates and lease rates, says ELA.

There are a number of types of leases, so be sure you select the one that fits the needs of your practice. There are full payout leases in which the lessor recovers, through the lease payments, all costs incurred in the lease plus an acceptable rate of return without any reliance on the leased equipment’s future residual value. There also are net leases, a lease where payments to the lessor do not include insurance and maintenance, which are paid separately by the individual who is using the equipment.

When deciding which lease is best for you, ELA advises you to consider the following factors:

- How long do you intend to use the equipment?
- What will you do with the equipment at the end of the lease?
- Your current and future cash flow.
- Your equipment needs as they relate to future growth.

Most leases run from 12 to 60 months. At the end of your lease, you generally can return the equipment to the lessor with no future obligation; renew the lease; purchase the equipment for a nominal fee or fixed price agreed upon at the lease inception, or buy the equipment at fair market value.

To obtain more information on leasing equipment, go to the ELA’s educational Website, www.chooseleasing.org.

If you decide to purchase equipment instead of leasing it, make sure to review the sales agreement. It will include information on warranties and repair requirements, limits of liability and details of the sale, as well as delivery information. Because warranties are important to sales contracts, it is a good idea to review this section carefully.

The Federal Trade Commission (FTC) says that when you make a major purchase, the manufacturer or seller makes an

important promise to stand behind the product. It's called a warranty. Federal law requires that warranties be available for you to read before you buy, even when you're just shopping by catalog or on the Internet. Keep in mind that coverage varies, so you can compare the extent of the warranty coverage just as you compare the style, price and other characteristics of the products you are interested in purchasing for your medical practice.

Here are some important points for you to consider when evaluating a warranty:

■ How long does the warranty last? Check the warranty to see when it begins and when it expires, as well as any conditions that may void coverage.

■ Whom do you contact to get warranty service? It may be the seller or the manufacturer who provides you with service.

■ What will the company do if the product fails? Read to see whether the company will repair the item, replace it or refund your money.

■ What parts and repair problems are covered? Check to see if any parts of the product or types of repair problems are excluded from coverage. For example, some warranties require you to pay labor charges.

■ Are there any conditions or limitations on the warranty? Some warranties provide coverage only if you maintain or use the product as directed.

There also are steps you can take to avoid potential problems with the coverage you receive with a warranty. So that you are not surprised later, be sure that you read and understand the conditions of the warranty before you purchase the equipment. You should save all your receipts and file them with the warranty. You may need this information to document the date of your purchase or prove that you're the original owner in the case of a nontransferable warranty.

It is a good idea to perform required maintenance and inspections on the product as recommended by the manufacturer. In addition, use the product according to the manufacturer's instructions. The FTC points out that abuse or misuse may void your warranty coverage.

Keep in mind that having a warranty doesn't mean that you will automatically get a refund if the product is defective. The

company may be entitled to try to fix it first. If you have problems with the manufacturer in getting the product repaired or replaced, you can contact your local consumer protection office. Even if your purchase does not come with a written warranty, it is still covered by implied warranties unless the product is marked “as is,” or the seller otherwise indicates in writing that no warranty is given. Some states do not permit “as is” sales.

Another important point is to understand how any disputes are to be resolved. Some warranties may require dispute resolution procedures before going to court. If all else fails, you may want to consider a lawsuit. You can decide to sue for damages or any other type of relief the court awards, including legal fees.

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Managed-Care Contracts

Managed-care contracts are often viewed as a tangle of legal language by many medical practices. Unfortunately physicians who don't understand the various clauses and exceptions may regret that they failed to take the time to understand what they were signing.

Above all, it is important to take a close look at the specific terms included in the contract. The third edition of the American Medical Association's Model Managed-Care Contract (which can be found on the AMA Website at www.ama-assn.org/ama/pub/category/9559.html) points out that managed-care contracts increasingly exhibit the elements associated with “contracts of adhesion,” which is a standardized contract that gives the weaker party only the opportunity either to adhere to the contract or to reject it.

Managed-care contracts will list a number of definitions that set out the specifics of the legal documents. Definitions are one of the most important sections of the contract. The AMA says that a right or responsibility may begin and end with the definition of a term. For example, be sure you understand what coordination of benefits means in the contract, says the AMA. The

goal of coordination-of-benefits provisions is to avoid duplicate payments for a single service.

At a minimum, the AMA recommends that physicians insist on the protection that is explained in Section 3.8 of the AMA Model contract. The language prohibits managed-care payers from engaging in the practice of “pursue and pay,” which results in substantial delays in payment to physicians.

Instead, physicians should offer to provide full assistance to help payers verify whether they are primary or secondary, in exchange for the payer’s written agreement first to pay the physician, then to pursue payment from potential secondary sources.

In addition, expanding the definition of payer may permit managed-care organizations (MCOs) to create “silent preferred provider organizations” by renting discounted physician services to other entities that are not a party to the contract, without the knowledge of physicians.

The AMA has also prepared a series of questions to ask before signing a managed-care contract. There are a number of provi-

Methods of Physician Reimbursement Used by HMOs*

MODEL TYPE	Salary	Profit Sharing	Fee-For-Service	Bonus Program	Capitation
IPA	5.1%	1.7%	71.2%	7.3%	75.1%
Network	2.1	2.1	76.3	9.3	76.3
Group	17.1	5.7	60.0	8.6	85.7
Staff	81.8	9.1	63.6	18.2	72.7
OWNERSHIP					
Corporate Owned	7.3	2.7	74.9	7.3	76.8
Corporate Managed	0.0	0.0	0.0	0.0	100.0
Corporate Affiliated	16.7	0.0	58.3	0.0	91.7
Hospital Owned	0.0	0.0	83.3	0.0	33.3
Independent	11.9	2.4	52.4	19.0	76.2
OVERALL AVERAGE	8.1%	2.5%	71.3%	8.4%	76.6%

*HMOs gave multiple answers. Totals add up to more than 100%. Other reimbursement methods used by HMOs included discounted fee-for-service, fee schedule, per diem and return of risk pools/withholds.

Source: Sanofi-Aventis/Managed Care Digest Series, Data source: Verispan LLC (c) 2004.

sions that physicians often agree to that end up causing unanticipated problems. You can avoid potential difficulties by making sure you understand your responsibilities under the contract.

For example, the AMA recommends that you understand how the contract defines “medically necessary” care. Does the contract use an objective standard, such as “prudent physician” standard, or does it give the managed-care organization (MCO) wide flexibility in determining what is medically necessary? A medical-necessity definition without a clear role for the treating physician is harmful to patients and physicians. As you know, MCOs will not pay for care that is not considered “medically necessary.”

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You also should be on the lookout for a unilateral provision, says Mr. Reiboldt. Under such a provision, MCOs can make changes to contracts on a unilateral basis without the practice or providers agreeing to them, he explains. It is important not to sign a managed-care contract with that kind of language, he warns.

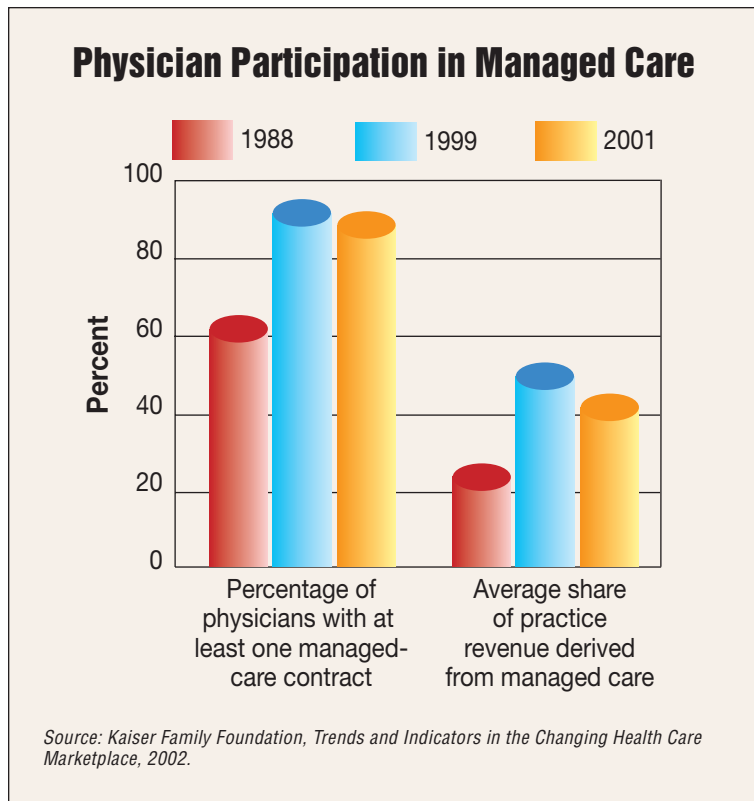
An indemnification or “hold-harmless” clause in a managed-care contract is another red flag. This clause means that if an action or investigation is started or any other claim is made against the physician that involves the managed-care organization, the physician will have complete responsibility for any costs the organization incurs, even if the physician is exonerated. The AMA warns physicians to beware of these clauses because your malpractice carrier is not likely to cover these costs; you would have to pay them personally in the event of a lawsuit.

It also is important to know what your reimbursement will be under the contract. For example, does the contract provide enough information for you to determine what you will be paid for the services you provide? Further, does the contract include a comprehensive fee schedule? If the contract lacks information on fees, insist that the MCO provide you with detailed information on payment methodology, including recognition of CPT codes and guidelines. If the fee schedule is not attached, the AMA

model managed-care contract says that the payment should revert to “usual and customary.” The model also prohibits the MCO from unilaterally reducing the fee schedule.

You should also know what your rights are to appeal a reimbursement decision. Does the contract provide specific details on how to appeal? It is important to make sure that the appeals process is fair and is not substantially weighted in favor of the MCO. Another question to ask is how you can terminate the contract. The contract may contain specific provisions on termination if the MCO breaches the contract.

If you have a dispute with an MCO, you can litigate disputes before a court, as long as there has been no request to arbitrate by the MCO before the lawsuit is filed. The AMA says that if a



physician cannot resolve a dispute with an MCO informally or through an MCO's internal procedure, mediation will not help.

It is important to have some understanding in the contract that there is some recourse beyond going straight to court and suing, Mr. Reiboldt says. "It is preferable to go before a clinical-oriented board or review panel within the MCO to settle a problem with a claim so you can deal clinician to clinician," he adds.

In addition, most contracts stipulate conditions under which either party can terminate the contract. The two main categories are "for cause" and "without cause." The former allow either the physician or MCO to end the contract if a certain provision under the contract is met. Termination "without cause" is not as clear. The contract should require the MCO to provide

You should also know what your rights are to appeal a reimbursement decision. Does the contract provide specific details on how to appeal? It is important to make sure that the appeals process is fair and is not substantially weighted in favor of the managed-care plan.

the reasons for termination in writing along with allowing you to review materials that were the basis for the decision.

You also need to know about your obligations if you decide to end the contract with an MCO. For example, the contract may say that you are required to continue to care for a plan's patients until another physician can be found to see those patients even though the contract is no longer in effect.

Be on the lookout for "deal breakers," Mr. Reiboldt says. Many managed-care contracts contain them, and you need to discover them before you sign on the dotted line.