ISSUE BRIEF

IX: Term, termination and nonrenewal

I. What issues should a medical practice consider regarding the term, termination and nonrenewal of a managed care agreement?

- What is the agreement's term, i.e., how long will the agreement be in effect? Will the agreement automatically renew for another term if neither party notifies the other that it wants to end the agreement?
- Does the agreement contain a without cause termination provision? If so, how much prior notice must one party give to the other?
- Does the agreement permit either party to terminate the agreement for cause? If so, what constitutes "cause" for you and health insurer? How much advance written notice of for cause termination must one party give to the other. Can both parties avoid for cause termination by curing the breach during the notice period?
- If the health insurer wants to terminate the managed care agreement, either without cause or for cause, what, if any, due process must the health insurer give you before the termination becomes effective? For example, is the health insurer obligated to give you a hearing?

II. A managed care agreement's duration may be significantly longer or shorter than the agreement's specified term.

A managed care agreement will contain provisions addressing the agreement's term, termination and renewal. An agreement's "term" refers to the time period during which the agreement will be effective. It is not unusual for a managed care agreement's term to range from one to three years. Termination and renewal provisions may significantly reduce, or expand, the time period during which the agreement is in force. For example, some agreements contain provisions allowing the health insurer to terminate the agreement without cause, meaning that the health insurer may terminate the agreement for any reason during the agreement's term, usually after the expiration of a prior notice period. Prior notice periods typically run from 60 to 120 days. So, for example, if an agreement with a three-year term allows a health insurer to terminate without cause after the expiration of a 60-day prior notice period, the health insurer may unilaterally end the agreement well before the three-year term expires.

On the other hand, a managed care agreement typically contains an evergreen clause, meaning that the agreement will automatically renew at the expiration of the previous term unless one of the parties informs the other that it does not intend to renew the agreement. Many agreements state that a party can elect to not renew the agreement only if the party gives the other party notice of nonrenewal prior to a specified number of days preceding the date on which the agreement's term expires. If you fail to provide notice of nonrenewal as required by the agreement, the agreement will automatically renew for another term and you will have to stay in the contract for another term unless you the agreement gives you another way out, e.g., via without cause termination.

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III. Due process

In the absence of due process protections, termination without cause can create significant financial difficulties for a physician, and health insurers in concentrated health insurance markets are sometimes able to use the prospect of these difficulties to exert leverage over physicians. In a concentrated health insurance market, payments to the physician by a single health insurer may constitute a large percentage of the physician's total revenue. If the health insurer terminates the agreement, the physician may lose a significant amount of revenue in a short period of time, e.g., after the expiration of the prior without cause notice period, because the physician may not have enough time to secure other payer contracts that will offset the lost revenue. If the health insurer is obligated to give the physician at least some due process rights, the physician may challenge the proposed termination and in so doing possibly convince the health insurer to abandon its termination plans. Even if, after the physician exercises all of the physician's due process rights, the health insurer still terminates the agreement, the exercise of those rights may itself delay the effective date of the termination and give the physician more time to secure replacement contracts.

IV. Reviewing managed care agreements and state regulation

Because of the negative impact that a health insurer's termination may have on a physician, you should scrutinize any agreement to determine what due process, if any, the health insurer is obligated to give you. A managed care agreement may not discuss due process issues, in which case you should consider seeking from the health insurer any extracontractual documents that outline any due process rights that you may have. For example, a health insurer may have developed a provider hearing procedures manual that describes pre-termination due process rights.

A number of states give you pre-termination due process protections. These due process rights commonly include written notice: (1) describing the grounds for termination; (2) stating that you may access any documents allegedly supporting the health insurer's proposed termination; and (3) stating that you have the right to request a hearing to challenge the proposed termination.[1] In the Managed Care Contract legal Database, the category "termination-due process" identifies laws that give you hearing or other termination due process rights and the category "termination" identifies numerous other state laws concerning termination, particularly those that mandate a notice period before a termination's effective date.

[1] In cases in which the health insurer is proposing to terminate a physician for reasons relating to incompetence or professional conduct, state law and/or Health Care Quality Improvement Act of 1986 may require the health insurer to give you extensive due process rights.

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