

MANAGED CARE BOOT CAMP

Brian M. Foley, Esq.
Schenck, Price, Smith & King, LLP
220 Park Avenue
PO Box 991
Florham Park, NJ 07932
(973) 539-1000
BMF@SPSK.COM



**PROVIDER BEWARE
OF THESE COMMON
MANAGED CARE
CLAUSES**

EXAMPLE 1: Payer

“Payer” means an employer, trust fund, insurance carrier, health care service plan, trust, nonprofit hospital service plan, a governmental unit, any other entity which has an obligation to provide medical services or benefits for such services to Enrollees, or any other entity which has contracted with MCO to use MCO’s provider network.

EXAMPLE 2: All Products

MCO has and retains the right to designate Provider as a Participating Provider or non-participating provider in any specific Plan. MCO reserves the right to introduce new Plans during the course of the Agreement. Provider agrees that Provider will provide Covered Services to Members of such Plans under applicable compensation arrangements determined by MCO. Provider shall accept compensation in accordance with this Agreement for the provision of any Covered Services to Members under a Plan, regardless of whether Provider is a Participating Provider in such plan.

EXAMPLE 3: General Offsets and Adjustments

Provider agrees to authorize MCO to deduct monies that may otherwise be due and payable to Provider from any outstanding monies that Provider may, for any reason, owe to MCO.

EXAMPLE 4: Comparable Provider Rate

If Provider, accepts at any time, payment from another Payer of like or lesser total reimbursement than provided in this Agreement, then the Provider agrees to give written notice of the new rate to MCO and to enter immediately into good faith negotiations with MCO regarding revision of MCO rate. If Provider fails to notify MCO of the fact that it accepted a lower rate, MCO may terminate the agreement, or MCO may deem any past savings amount that it would have realized had the new rate been timely disclosed to it as a recoverable amount to be repaid or require that the revised compensation reflect unrealized past savings.

EXAMPLE 5: CPT Codes

Provider agrees that if the MCO reassigns or re-bundles CPT codes, it will accept the applicable MCO Compensation for these services or procedures as reassigned or rebundled by MCO as payment in full.

EXAMPLE 6: Litigation

In the event of any litigation between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees and cost of litigation, including, without limitation, any expert witness.

Example 7: Noninterference with Members

During the term of this Agreement, Provider and its Qualified Physician shall not advise or counsel an Enrollee to disenroll from MCO's Plan and will not directly or indirectly solicit any Enrollee to enroll in any other health care service plan or insurance program.

EXAMPLE 8: Indemnification and Hold Harmless

Provider agrees to indemnify and hold harmless and defend MCO from and against any and all loss, damage, liability and expense, including reasonable attorneys fees attributable to any and all acts and omissions of the Provider.

EXAMPLE 9: Termination Without Cause

This Agreement may be terminated without cause by either party by written notice given to the other party at least one hundred twenty (120) days in advance of such termination. In such cases termination will occur on the last day of the month in which the one hundred twentieth (120th) day following such notice occurs. Upon said termination by provider, the right of each party hereunder will terminate with respect to subscriber groups enrolled by the MCO after the MCO receives Provider's notice of termination. However, this Agreement will continue in effect with respect to Enrollees existing prior to the MCO's receipt of such notice until the anniversary date of the MCO's contract with the subscriber group or for one (1) year, whichever is earlier, unless otherwise agreed to by the MCO. If termination is by the MCO, the rights of each party will terminate on the effective date of termination.

EXAMPLE 10: Liability

Notwithstanding anything herein to the contrary, MCO's liability, if any, for damages to Provider for any cause whatsoever arising out of or related to this agreement, regardless of the form of the action, shall be limited to Provider's actual damages, which shall not exceed the amount actually paid to Provider by MCO under this agreement during the twelve (12) months immediately prior to the date the cause of action arose. The MCO shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach or disagreement or any action, inaction, alleged tortious conduct, or delay by MCO.

EXAMPLE 11: Limitation on Action

Notwithstanding anything herein to the contrary, no action, regardless of form, arising out of or relating to this agreement may be brought by Provider more than twelve (12) months after such cause of action has arisen.