6 HIDDEN RISKS IN THERAPY CONTRACTS

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Objectives

- Identify 6 potential pitfalls in therapy contracts that are not always obvious.
- Understand the therapy indemnification clause and what the indemnification clause actually covers in case of denial.
- Be able to identify places where the contract can be negotiated to save on costs and generate revenue.
- Understand the hidden costs of exiting a therapy contract and how to keep your options open for the future.

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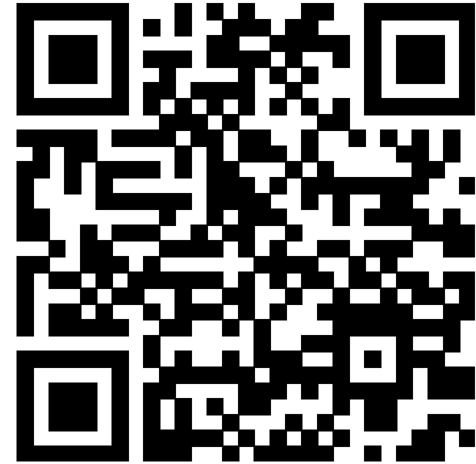
Ground Rules

- There are sections of this presentation that require audience participation.
- Polling questions
- Ask questions as we go
- You must laugh at my jokes!



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Legal Disclaimer

- I am not a lawyer, and nothing in this presentation should be interpreted as legal advice. You should discuss your situation with legal counsel before taking action.

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Who is in the Room?

A. Small chain or single facility with therapy contractor

B. Small chain or single facility with in-house therapy

C. Large chain with therapy contractor

D. Large chain with in-house therapy

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Introduction

- Background in therapy management and contracting.
- I have reviewed hundreds of therapy contracts.
- Reviewed/Adjusted/Modified contracts for therapy company and for SNFs.
- Contracts often lean towards the author.
- There are good and bad therapy contractors, and thus there are good and bad therapy contracts.

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Who are the Players?

- If you are dealing with some of the larger, national providers, they have hundreds of million in revenue per year which means that they also employ a team of lawyers to create these contracts.
- Discuss big fish, small pond mentality.
- They came to you for your business, so you are in the driver’s seat.

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Who are the Players?

- There is quite a bit of competition out there competing for the same facilities.
- They will likely do more than you think they will to get your business.
- Be sure that you are negotiating an “arm’s length” deal.
- Doing business with a national provider may bring it’s own liability issues (e.g. Rehabcare settlement).

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Philosophy

- Level the playing field.
- Create the most future opportunity for the facility.
- Give the SNF the most flexibility in the coming years.

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In Practice

- Most contractors bid for Part A in order to access the Part B.
- Discussion: Part A vs. Part B metrics and billing differences.

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In Practice

- The contractor is intending to take 18-33% of what you pay them back to the home office each month.
- Let's jump into the components…

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#1

Multiple Procedure Payment Reduction Policy (MPPR).

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Poll Question

- Are you currently sharing the MPPR reduction with your therapy contractor?

A. Yes

B. No

C. Not sure

MPPR

- Started in 2012.
- Impacts one part of the CPT codes used for Part B services.
- Is the reduction in reimbursement after the highest paying CPT code per treatment day to the tune of 9-12% per additional CPT code. With higher paying CPT codes, this $$ increases.
- 50% reduction in one component of the CPT code.
- Some other commercial insurers have also adopted MPPR practices.

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MPPR

- CPT code construction
- Liability expense – covers liability
- **Practice expense – covers gloves, gowns, water, power, etc.
- Labor expense – covers labor expense
- Geographic Index – adjusts the entire fee based on where you are in the country.

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MPPR

- Are you sharing the MPPR reduction with your contractor?
- This can have a huge impact on whether or not Part B therapy is generating any revenue for the facility or costing you money.
- Let’s look at an example:

MPPR: Example

CPT	Description	Fee	MPPR rate	75%	75% w/MPPR
Physical Therapy Eval & Treatment					
97161	PT Evaluation	$87.14	$85.75	$65.36	$64.31
97110	Gait Training	$31.20	$23.66	$23.40	$17.75
97530	Therapeutic Activities	$40.14	$27.88	$30.11	$20.91
Occupational Therapy Eval & Treatment					
97165	OT Evaluation	$92.50	$92.50	$69.38	$69.38
97535	ADL Retraining	$34.77	$25.42	$26.08	$19.07
97530	Therapeutic Activities	$40.14	$27.88	$30.11	$20.91
	Totals	$325.89	$283.09	$244.42	$212.32

MPPR: Take Away

- Consider negotiating to share the MPPR-adjusted rate.
- Or reduce the Med B negotiated rate if you are not sharing the MPPR adjustment.

#2

Part A Evaluation Minutes

Poll Question

- Do you currently pay for Part A evaluation minutes?

A. Yes

B. No

C. Not sure

Part A Evaluation Minutes

- Under RUGs or PDPM, evaluation minutes do not get reported on the MDS for Part A patients.
- Most contracts that we have reviewed have contractors getting paid a % of the therapy case-mix groups (CMGs).
- In this way, you are only paying a % of what you are paid, which has nothing to do with the number of minutes

Part A Evaluation Minutes

- “Non-Part B Evaluations”
- This particular contract had a rate for non-Part B evaluations and the contractor included Part A evaluations in that category.
- The contract was very complicated and this is likely why the provider missed this issue

Part A Evaluation Minutes

- In this case, we saw the average evaluation time go from 20-30 minutes to 50-60 minutes.
- Take away to consider: Do not pay separately for Part A evaluation minutes.

#3

Non-competition/ Non-solicitation clause

Poll Question

- Can you hire your contract therapy staff as your own employees even if you have a non-compete clause?

A. Yes

B. No

Non-compete/Non-solicitation Clauses

- Designed to limit your future options.
- Used as a deterrent when providers are looking to make a change.
- Discuss cost of keeping therapists when non-

Non-compete/Non-solicitation Clauses

- Does not require contractor to continue earning your business on an ongoing basis.
- They do have their place.
- Allows the contractor to recoup some recruiting and training costs.

Non-compete/Non-solicitation Clauses

- Are non-compete clauses enforceable?
- Right to work state.
- Is the non-compete with the facility or the therapy staff?
- If facility management changes, does the contract transfer?
- Scare tactic between contractor and staff if you try to hire them.

Non-compete/Non-solicitation Clauses

Take Away Points to Consider:

- Negotiate to have them to diminish over time.
- Negotiate to have them removed altogether.
- *ALWAYS* exclude existing staff from the non-compete.

#4

Termination Notice

Poll Question

- How long should the termination notice be?

A. 30 days

B. 60 days

C. 90 days

Termination Notice

- Think of this as how long you want the employee you just fired hanging around.
- We recommend you consider a 30-day notice, however, we have seen 60-day and even 90-day notices.

Termination Notice

- Are you limited as to when you can give the notice? Possibly only on the anniversary date?
- In an “at-will to work” state, you can terminate an employee at any time with or without cause.
- Depending on your contract’s termination notice requirement, you may not be able to terminate your contractor at any time.

Termination Notice

- Think of this as your contractor earning your business month-over-month and year-over-year.
- Take away to consider: Negotiate to allow termination at any time.

#5

Indemnification Clause

Indemnification Clause

- Do you know what your indemnification clause actually indemnifies you for?

Indemnification Clause

- Initial response depends on type of ADR received.
- MAC/RAC/SMRC – respond appropriately.
- ZPIC/UPIC, DOJ, OIG – First call should be to your lawyer. In this case, fraud is suspected.

Indemnification Clause

- Typically the contract spells out how long you have to notify the contractor.
- I have seen as short as 5 days and as long as 14 days, but the clock has started once the notice has been received.
- Let's discuss an example:

Indemnification Clause - Example

- Facility receives ADR for a Part A patient. The facility was reimbursed $500/day for that patient’s 10-day stay.
- The facility paid the contractor $100/day for the therapy services.

Indemnification Clause - Example

- The indemnification clause says that the contractor will pay back the facility $100/day for the days denied.
- This typically will not happen until the appeals are exhausted and finalized. This could take years.
- Note that the facility, in this case, will lose a net of $400/day for the days denied.

Indemnification Clause

- Take away to consider:
- Set your notification timeline at least 14 days out from notification.
- Be sure that the staff opening the mail are on the lookout for this type of notification.

#6 (Added 1/1/2022)

Therapy Assistant Reimbursement Rates

Poll Question

- Are you sharing the therapy assistant payment reduction with your contractor?

A. Yes

B. No

C. Not Sure

Assistant Reimbursement Reduction

- Are you sharing the assistant payment reduction with your contractor?
- As part of the MPFS Final Rule for 2022, therapy assistant services for Medicare Part B patients are being reimbursed at 85% of the fee schedule.

Assistant Reimbursement Reduction

- Contract likely says that you pay a % of the MPFS for Med B services to the contractor.
- Is your contractor mitigating the reduction?
- Other payors following suit.

Assistant Reimbursement Reduction

- Take away to consider:
- Adjust contract so that you are sharing this reduced reimbursement with the therapy contractor.

Bonus

For those of you in a Continuing Care Retirement Community, there is a bonus key issue to make sure you don't overlook in addition to those six:

Depending on how (contractually) the therapy services are being provided in your IL and AL, there could be hundreds of thousands of dollars literally walking out the door year-over-year.

Bonus – CCRC or IL/AL

- Therapy services provided in IL/AL settings where there is an on-campus SNF can be billed in a few different ways:
- In most states, therapy services provided at your on-campus IL/AL can be billed through your SNF PTAN/provider number.
- Therapy services can be billed by the contractor directly to Medicare or other third-party payer if they have a Rehab Agency (RA) or Private Practice (PTIP) license.

Bonus – CCRC or IL/AL

- In the RA or PTIP case, the contractor is not revenue sharing with the facility, rather they are paying rent for the space occupied.
- If you go this route, be sure to consider what is Fair Market Value for rent! Which is often *NOT* the same as an AL/IL apartment rental amount.

Bonus – CCRC or IL/AL

- Revenue share is often preferable for the facility with no rent, as the revenue share is likely much greater than the rent would be.
- In the revenue share model, the SNF will bill for services and not the contractor.
- I have seen facilities lose out on hundreds of thousands of dollars per year by taking the rent vs. the revenue share.

CCRC or IL/AL - Example

- Therapy contractor paying $2,000 per month for rent – the fair market value for retail space in that geographic location.
- The contractor regularly bills $50,000-$60,000 in services each month.
- Since there is no revenue share like in the SNF model, the margins in this scenario are even higher.

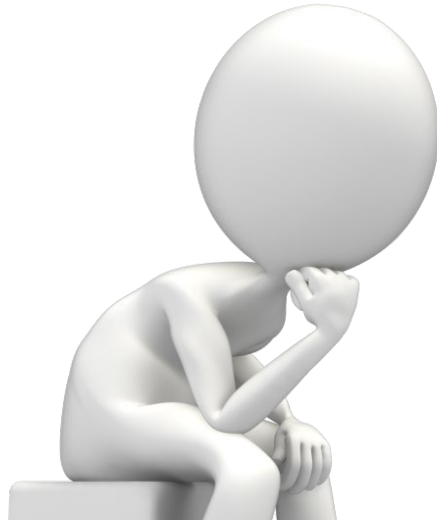
CCRC or IL/AL - Example

- If this was a revenue share model like we discussed earlier (75% to the contractor, 25% to the SNF), then the SNF is looking at keeping $12,500 - $15,000.
- Understand that there is some more work involved here as the SNF has to process the claim instead of the contractor.
- In the revenue share example, the contractor is not paying rent.

CCRC or IL/AL - Example

- If you are in this scenario (contractor paying rent), the CCRC often has no idea of how much the contractor is billing each month.
- This may be something that you want to look in to.

Contemplating Other Therapy Models?



Therapy Service Options

- Contract
- In-House
- In-House Management Model

Contract

- You are probably familiar with this model.
- Pay a premium for therapy services. 18-30+% of what you pay them goes back to therapy contractor’s home office.
- Lack of control over who comes and goes from facility.
- Lack of control over what the therapists can and cannot do.

In-House

- Unless you have a therapy management structure in your organization, no one understands what the therapists should and shouldn't be doing.

- Often operate at very low productivity.

In-House

- The administrator often doesn't speak "therapy". This leads to lack of:
  - Questioning the therapy staff about clinical issues.
  - Questioning what should and shouldn't be billed.
  - Holding therapists accountable for billable time.

In-House

- Therapists often giving away services.
  - This creates billing and liability issues.
  - Undervalues therapy services.
  - Does not collect valuable reimbursement for the facility.
  - In case-mix states, may underrepresent your case-mix.

In-House Management Model

- Hybrid of the two. This can be the best of both worlds.
- If managed well, allows you to keep the premium you were paying the therapy contractor.
- Contractors will often offer this model – buyer beware!

In-House Management Model

- In this model, look for a management company that replaces your contractor.
- Software
- Continuing Education Units for staff
- Denials Management
- Compliance

In-House Management Model

- Recruiting in an in-house model can be much easier than in a contract model.

In-House Management Model

- Oversight
- You need someone on your team who can look closely at what the therapists are doing and help make appropriate adjustments.
- There is usually either a flat fee or adjusting fee based on management company's fee

Questions?

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