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WHAT YOU DON'T
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YOU DON'T KNOW

HOW TO CONTRACT AND NEGOTIATE WITH PAYERS AND HEALTH PLANS



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WHAT YOU DON'T
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Spectrum of Digital Health Services



Technology
Products

Software License

License Fees

Vendor

Clinical Services

Doctor Visit

Fee Schedule

Provider

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How do payors contract for digital health?

- Health plans often require use of their own standard contract forms, even if not designed for digital health.
- Finding the best match:
 - Provider Agreement?
 - Provider Network Agreement?
 - Administrative Services Agreement?
 - Software Services Agreement?
 - More than one of the above?

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Historical Misalignment of Economic Interests between Providers and Plans

The Traditional Logic of a Health Plan Contract

Providers want more and health plans want
less

Payment terms derived from Medicare fee
schedule

Limited opportunity to negotiate without
market power

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Digital health is accelerating a shift toward economic alignment & collaboration

Why are health plans contracting for digital Health?

Reduce Costs

- Lower visit rates
- Reduce utilization of higher-cost care (e.g. ER visits)

Grow Revenues

- Attract new business (e.g. from self-funded employers)
- New member growth & member satisfaction

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Aligning Digital Health Contracts with Incentives and Interests

There is a tension within health plans between maintaining internal consistency on contract terms and retrofitting the contracts to match new incentives, business interests, and organizational structures

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Digital Health Hot Spots in Health Plan Contracts

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Privacy & Security

- Depending on the services, you may be a covered entity, business associate, or both. This is often a source of confusion during contracting and beyond.
- Anticipate strong demands on information security (e.g. required certifications, offshoring restrictions, etc.)

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Government Program Participation

- Does the contract include coverage for government program beneficiaries (it's not always obvious)?
- Do you have processes in place to comply with government program requirements (they won't all be listed)?

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State Restrictions On the Corporate Practice of Medicine

- Who is contracting to deliver the clinical services?
- Who is contracting to bill and collect payments for clinical services?
- Who is signing the contract?
- Will services delivered outside of the health plan's home state be covered under the contract?

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Provider Credentialing

- Will the health plan agree to delegate its provider credentialing responsibility to the digital health organization?
- Health plan conditions may include:
 - Delegated credentialing agreement
 - Credentialing Audit
 - Third party accreditation

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Additional Terms for Digital Health

- Relating to:
 - Service Levels
 - Clinical Quality
 - Privacy and Security
 - Record sharing
 - Accreditation

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STANDARD PROVIDER CONTRACT TERMS

Definitions

- Clean Claim
- Covered Services
- Payer / Payor
- Member
- Medically Necessary / Medical Necessity

• Term & Termination

- Term of Contract
- Auto Renewal
- Termination w/o Cause
- Termination for Breach
- Provider Payer Termination
- Termination Due to Material Changes in Policies & Procedures
- Payer Immediate Termination
- Institution Immediate Termination

Product Participation

- Products Included
- Specialty Products

Policies & Procedures

- Payment Policies
- Protocols (Utilization, Quality, Medical Management)
- Subrogation/COB
- Member Hold Harmless

Reimbursement Provisions

- Rates
- Fee Schedule
- Fee Schedule Changes, updating rights, notice requirements before changing fee schedule
- Lesser of Billed Charges
- Charge Master Increase Limitation
- New Technology or Services

Timely Filing, Claim Payment and Retroactive Adjustments

- Claims Payment
- Timely Filing of Claims
- Retroactive Adjustments
- Auto Remit

Liability Provisions

- Hold Harmless/Indemnification
- Liability Insurance

Other Considerations

- Member Identification
 - Process / Arbitration
 - Confidentiality
 - Records
 - Medical Records
 - Audits and Inspections
- ## Amendment/Assignment
- Amendment
 - Transfer of Assets / Changes in Ownership and Control
 - Assignment

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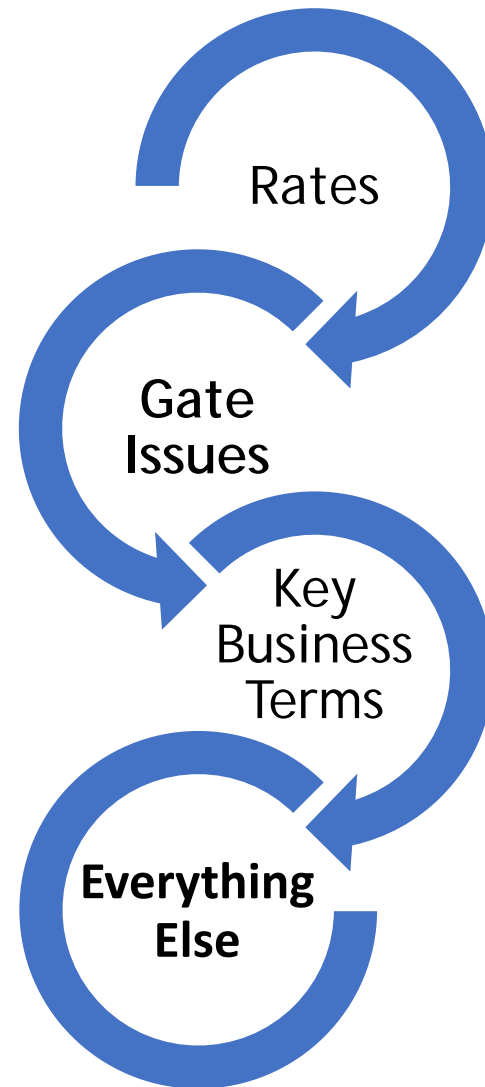
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SEQUENCE NEGOTIATIONS...

...If not
literally,
then
strategically
and without
disclosing
your
negotiation
sequencing
to payer.



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Standard Terms...Digital Health Providers

- New technology and Services
- Access to Medical Records
- Acquisition, Change in Control, Transfer of Assets
- Assignment

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STANDARD TERMS - ONE EXAMPLE

"PROVIDER to grant **PAYER** access to **PAYER'S** Members' records within **PROVIDER'S** Electronic Medical Records systems, where applicable."

What limitations are on Payer's use of Provider's E/digital Information?

What's the purpose of providing e-access?

Who is responsible for obtaining member consent? Payor or Provider?

What happens if the underlying purpose for e/digital-access changes?

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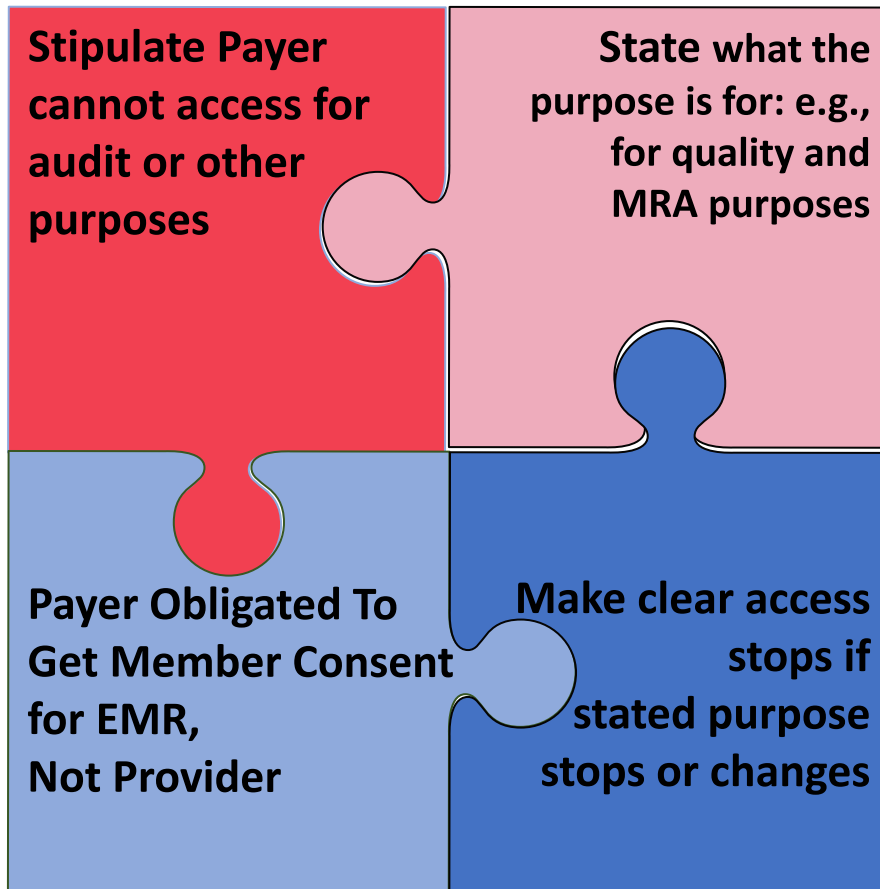
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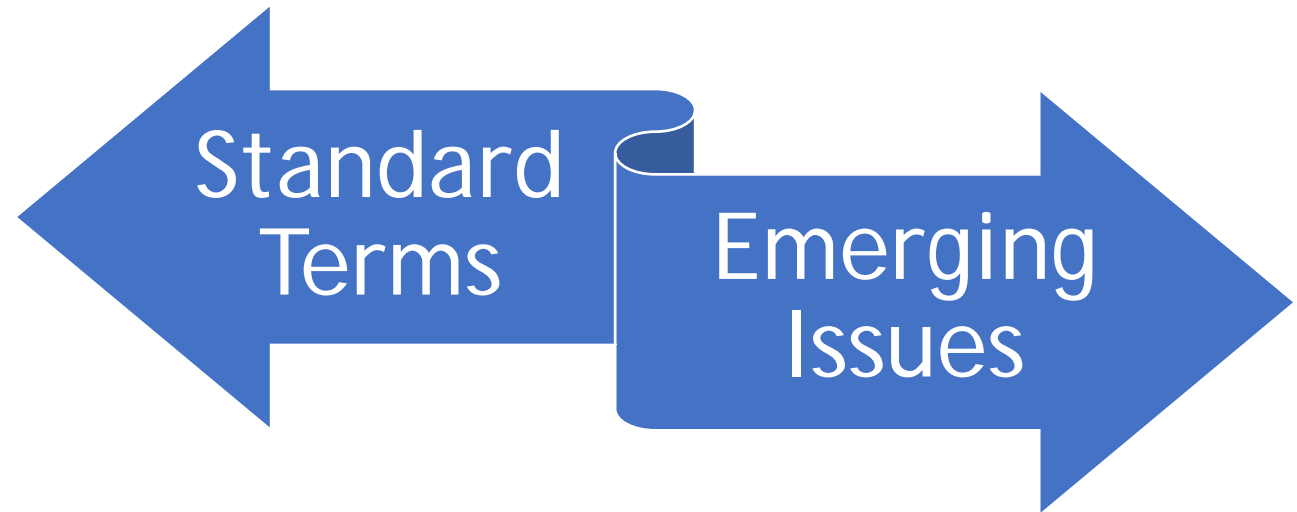
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Standard Terms...Emerging Issues All Provider Types



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Standard Terms...Emerging Issues All Provider Types

- **Shift to more Self-Funded Payers**
 - Fully-insured ~ what % of dollars is FI?
 - Self-funded ~ what % of dollars is SF?
- **Medical Necessity Not Defined**
 - Ensure contract stipulates generally acceptable industry standard criteria are referenced.
 - Do not let Medical Necessity be defined outside of the agreement (e.g., in P&Ps or in a provider manual); this will make it unilateral in the payer's favor.

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Standard Terms...Emerging Issues

- **Fee Schedules**
 - Evaluate and mutually agree on fee schedules, reimbursement methodologies
 - Prohibit unilateral fee schedule changes or limit it to 1x per year on a schedule with at least 90 days prior written notice and option to terminate
- **“Market Rates”**
 - Some payers are using the term “market rates” when the payer is really referencing their own payment levels; not the overall market.

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