

## Entire agreement -- oral representations

**The Issue:** I'm sometimes asked if an oral statement by a healthplan representative is binding. Can the payor be held to such a statement, or must the details be put to paper?

Of course it's always best to have representations (promises) submitted to you in writing, especially if you're faced with something along the lines of the following actual, absurd situation.

The contracting representative for a network with a Medicare Advantage product contacted an administrator to update the practice's Provider Agreement. The administrator replied with a few requests for changes.

However, rather than addressing the requests the plan's representative kept sending DocuSign e-mails with a copy of the original agreement, but none of the requested changes. After the agreement was not signed and returned he called the administrator the first week of October and stated that his deadline was October 15th to get all agreements signed in order to show Medicare that the payor had a "paper network" in place. Otherwise the plan would have to send a letter to all of its Medicare Advantage Members seen at the practice in the past year telling them that the practice was no longer a part of the network.

Hmmm.... Nice. Nothing like a little added pressure.

The administrator related that during the phone call the contracting representative stated he was waiting for a response from corporate, but he believed that the plan could accommodate all of the requested changes. He asked the administrator to sign the agreement as presented via DocuSign, **without updates**, to meet the plan's deadline. **And then once the changes were approved by corporate he'd send over an updated version.**

The administrator was rightly not comfortable with signing until the updates were made. Unfortunately through experience some practices and facilities have learned that there can be good reason not to trust in Managed Care, especially when it comes to the terms and conditions of a Provider Agreement. If you sign that agreement as-written then upon execution by the plan it is binding on both parties.

Can it be amended afterward? Of course it could be. But the statement from the plan's rep that he is waiting for a response from corporate and believes that after signatures (at some unspecified time) they can accommodate all of the changes as requested... well that certainly would not give me a warm and fuzzy feeling that the payor will follow through.

What if in a similar situation you sign the agreement as-written but then the plan doesn't accommodate all of your requested changes, or doesn't accommodate most, or maybe even any of them? Then where would do you stand?

If you went back to the contracting rep he/she might say something like, *"Sorry, I really thought they'd make the changes. Maybe we can try again next year."*

The plan likely is under no obligation after the fact to make good on supposedly acceptable (oral) representations. In fact the agreement will have a statement similar to this one that only the agreement as-written plus collateral materials are valid.

**ENTIRE AGREEMENT.** *This Agreement, including the attachments, addenda and amendments hereto and the documents incorporated herein, constitutes the entire agreement between <name of plan> and Physician with respect to the subject matter hereof, and it supersedes any prior or contemporaneous agreements, oral or written, between <name of plan> and Physician.*

Now I had no special insight into the situation I've just described. And if a plan makes a similar statement one won't know what's true and what's B.S. The statement that the plan needed this agreement signed by October 15th (in about a week) or they'd send all of the patients a letter saying the practice was no longer in-network.... sort of sounds like a threat, doesn't it?

Maybe it is; maybe it is not. But it's certainly cause for concern.

**Possible Solutions:** I would recommend replying to similar scenarios that you're prepared to sign the agreement by the deadline, but your attorney has advised that you can only sign a document if appropriate changes are already incorporated. If the contracting rep says they cannot get the document changed prior to the deadline, and if your physicians choose to sign as presently written, well that's their decision. But then you're rolling the dice, and the dice are loaded in the "house's" favor.



If a plan would go so far as to drop your practice from its network for failure to sign an agreement under unreasonable pressure (i.e., the time constraint and associated threat of being dropped), and absent anything **in writing** stipulating that specific changes (an amendment) will be made effective not later than <fill in a date>, is that a plan you really want to be in bed with?

Please ask your attorney for guidance on signing a Provider Agreement under the circumstances I've described. The above is just my opinion, of course. YMMV.