The Break-Up: What You Need to Know About Managed Care Contract Termination

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About Us

Wolfe Pincavage, LLP is a boutique law firm based out of Miami, Florida that handles healthcare matters, complex business disputes, and insurance cases.

Our dedicated healthcare team focuses on:  
• Managed care contracting and dispute counseling.  
• Large-scale hospital and physician reimbursement litigation.  
• Healthcare transactions, compliance, and regulatory matters.
Road Map

I. Making the Business Case to Terminate
II. Preparing For Termination
III. Post-Termination Issues
IV. Questions & Discussion

Part I: Making the Business Case to Terminate
I: Making the Business Case to Terminate

Initial Big Picture Inquiries

• What is the health system’s ultimate goal?

• Is the health plan objectively deserving of termination?

• How much leverage does the health system have?

• What is the impact of termination on the health system’s bottom line?

Inquiry 1: What is the health system’s ultimate goal?
I: Making the Business Case to Terminate
Real vs. Strategic Termination

Is Termination Real or Fake?

**Desired Outcomes**

- Re-negotiate new language
- Re-negotiate new rates
- Termination
- Combination
Inquiry 2: *Is the plan objectively deserving of termination?*

I: Making the Business Case to Terminate

*Gather the Data*

**Compare 4-5 years of data**

- Summary of rates per payor (payor and product)
- Denial rate by payor
- Actual vs. expected payment by payor
- Total charges per payor
- Number of patients per payor
- Expected reimbursement as a % of charges in the aggregate
- A/R over 60, 90, and 120 days old
- Specific product performance issues
I: Making the Business Case to Terminate

Compare Contract Terms

Compare contract terms to other payors

- Utilization management/audits
- Compliance with policies, procedures, and manuals
- Silent PPOs
- Adding or modifying locations of service
- Termination without cause
- Indemnification
- Prudent layperson
- Claims processing (prompt payment/recoupment)
- Sequestration
- Provider tiers

Inquiry 3: How much leverage does the health system have?
I: Making the Business Case to Terminate

*Types of Leverage*

- Termination provisions in managed care contract
- Open enrollment timeline
- Availability (or lack thereof) of other payors in the market
- Network adequacy/unavailability of other providers in market
- Specialty services
- Limited number of lives in the market
- Plan needs hospital system for other products

Inquiry 4: *What is the impact of termination on the health system’s bottom line?*
I: Making the Business Case to Terminate

*Impact on Bottom Line*

- Conduct pre-termination disruption analysis
  - Emergency room utilization (out-of-network collections)
  - Participating vs. non-participating rates
  - Reductions in elective inpatient and outpatient procedures
  - Increased collection costs
    - Denials
    - Underpayments (usual & customary)
    - Payment made directly to patient

Part II: *Preparing for Termination*
II: Preparing for Termination
What must we do to get ready?

• Send notice of termination
  • External
  • Internal

• Identify roles and responsibilities of internal departments/units

• Manage C-Suite concerns and expectations

II: Preparing for Termination
Notice: External Communications

• Health Plan

• Governmental agencies (e.g. CMS, DOI)
  • By law and/or contract

• Patients
  • By law and/or contract

• Community, at large
  • Website, social media, press releases, television, radio, newsletters
II: Preparing for Termination

*Notice Timeline: 90 Day Termination (Medicare)*

**PAYOR REQUIREMENTS**

- 90 days (CMS)
- 30 Days (All enrollees)

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**Departments/Units**

- Senior corporate leadership
- Medical staff leadership
- Government relations
- Marketing/communication/public relations
- Patient access/case management/central scheduling
- Accounting
- Legal/compliance
- Information technology
II: Preparing for Termination

Department Action Items: Senior Corporate Leadership

• Need 100% support from C-Suite
  • The college roommate scenario

• Talking points
  • The proof is in the pudding – DATA
  • Effect on bottom-line
  • Impact on patients
  • Administrative burden

• Local politics/other external factors

II: Preparing for Termination

Department Action Items: Managed Care

• Send notices (internal and external)
• Develop strategy to move members to other plans
• Work with Legal department to develop balance billing policy
• Access to rental networks
• Update patient accounting system & contract management system
• Confirm with plan its timeline for notifying members
• Work with Legal department to develop single-case agreements
II: Preparing for Termination

*Department Action Items: Accounting*

- Analyze impact on health system’s budget
- Determine how health system will book A/R

*Department Action Items: Legal/Compliance*

- Compliance with state and federal notice requirements
- Compliance with other relevant laws (e.g. HIPAA)
- Compliance with continuity of care rules
- Assess potential legal claims arising out of:
  - Defamatory notices
  - Accounts Receivable
II: Preparing for Termination

**Department Action Items: Marketing/Communications/Public Relations**

- Press releases
- Termination content on website
- Termination content for health system newsletters
- Advertisements or news stories (newspaper, radio, TV)
- Social media content
- Community relations committees

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II: Preparing for Termination

**Department Action Items: Patient Access/Central Scheduling/Case Management/Patient Relations**

- Identify:
  - Patients covered by the plan (previous 12 months)
  - Future scheduled admissions & outpatient services
  - Current admissions
- Create a telephone hotline
- Educate customer service representatives
- Develop talking points for customer service representatives
II: Preparing for Termination

*Department Action Items: Information Technology*

- Terminate remote access by the health plan
- Assistance with telephone hotline

Part III: *Managing Post-Termination Issues*
III: Post-Termination Issues
We Terminated – Now What?

• Outstanding unpaid or underpaid claims
  • Next steps?

• Collection of direct payments from patients

• Balance billing

• Hardship/self-pay policies

III: Post-Termination Issues
We Terminated – Now What? (Cont.)

• Increased emergency department denials and underpayments

• Single-case agreements

• Decreased elective treatment

• Public and patient perception
III: Post-Termination Issues

Continuity of Care: Medicare

• Medicare [42 CFR 422.504(g)(2)]
  • Must continue treatment post-termination for:
    • Period CMS made payment to MA plan for the member; or
    • Inpatients, until member is discharged

Continuity of Care: State Law

• Arkansas Code [23-99-408]
  • Must continue treatment post-termination for:
    • Members receiving treatment at time of termination until the earlier of:
      • Episode of acute condition is completed; or
      • 90 days
III: Post-Termination Issues

**Continuity of Care: Commercial Contracts**

- Contract will apply to services provided post-termination
- Generally, conditions that apply for continuity of care could include:
  - Pregnancy 3rd trimester or high-risk pregnancy
  - Newly diagnosed or relapsed cancer (chemo, radiation, reconstruction)
  - Transplants
  - Major surgeries in acute phase w/ 6-8 week follow-up
  - Serious acute conditions (e.g. heart attack or stroke)
  - Chronic conditions requiring active treatment

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III: Post-Termination Issues

**Continuity of Care**

- Generally, conditions that do not qualify for continuity of care could include:
  - Routine exams, vaccinations, and health assessments.
  - Chronic conditions (e.g. diabetes, arthritis, allergies, asthma, kidney disease & hypertension that are stable)
  - Minor illnesses (e.g. colds, sore throats, ear infections)
  - Elective scheduled surgeries.