[Secrets for]

Negotiating Payer Contracts

(Don't bring a knife to the gunfight)

by Ron Howrigon

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For years I was the bad guy. As a negotiator for several large health insurers in the United States, my job was to convince providers to agree to the smallest reimbursement possible for their services, at terms that were largely unfavorable to them. I was good at my work. While part of my success was due to cleverness and skill, surely another part of my success was due to the physicians and administrators that were sitting across the table from me. Many of these individuals lacked negotiation skills, were willing to accept whatever I terms I offered, or had simply not gathered the data needed to win themselves a better deal.

Today I am a changed man. Several years ago I became very concerned about what the managed care companies were doing to healthcare delivery in this country. I decided that I could no longer be part of an industry that was systematically doing significant damage to the delivery of healthcare services in the name of profits and shareholder returns. So I left a very lucrative job, started a consulting company, Fulcrum Strategies, and devoted myself to helping physicians and hospitals negotiate more effectively with managed care companies.

The Damage Done

To support my claim that managed care companies are doing significant damage to healthcare delivery in this country you only need to consider the following national statistics. In the years between 2001 and 2005:

- The average health insurance premium increased by 58 percent
- The average employee contribution for healthcare costs increased by 75 percent
- The portion of each premium dollar spent on direct healthcare decreased from 89 percent to 86 percent
- The four largest insurance companies had increased revenue by 46 percent and increased pre-tax profits by 293 percent (to $11.8 billion)
- Over one-third of all physicians reported working more than 60 hours per week
- Adjusted for inflation, the average physician income decreased by 5 percent while the income of all other professional/technical workers income increased by 3.5 percent.

So, how can we reverse these trends and avoid the train wreck that will happen to healthcare delivery if nothing changes? To start, physicians and other healthcare providers need to do a better job at the negotiation table. And here's a prescription for how to do just that!

Make Negotiation Part of Doing Business

Today, nearly all oncology and cancer treatment centers are under financial pressure, including:

- Ongoing cuts in Medicare reimbursement for pharmaceuticals
- Private payers and managed care companies instituting similar payment cuts
- Projected future reductions called for by the Medicare Sustainable Growth Rate (SGR) formula.

Community cancer centers and oncology practices cannot afford to have their opportunities limited or to lose money on services provided to commercial patients. Bottom line: cancer care providers cannot afford to accept whatever the payers and managed care companies offer.

Instead providers must ensure that their payer contracts reflect the realities of doing business, including the cost of providing care that is highly specialized and keeping up with new and expensive technologies and advancements in cancer care. In addition, community cancer centers and oncology practices must structure their payer contracts so that they provide enough revenue to offset the losses from Medicare, Medicaid, and uninsured patients.

Naturally, private payers and managed care companies will argue that their customers should not have to shoulder the burden of this cost shifting. My response is simple: "The alternative is worse." If employer-based health insurance contracts do *not* offset the losses from public payers and the uninsured, providers who care for these cancer patients will either go out of business or reduce the quality of care they provide. Most of us can agree that either option is far more damaging than the cost shifting that must occur to maintain the quality of care and service that our physicians currently provide.

While negotiating good managed care contracts is a basic requirement for today's healthcare providers, getting the "right" terms in your contract requires data and skillful negotiation tactics. It also requires knowing in advance what constitutes a reasonable offer, and what you should refuse.

First Things First

When given a reimbursement contract, you must first understand that the document is *not* a finished product; it is the starting point for negotiation. The other basic premise you must understand is that the contract represents the interests of the private payer or managed care company. Further, these interests are generally diametrically opposed to the interests of community cancer centers or practices.

Second, you must accept the fact that you are probably at a huge disadvantage when you sit down at the negotiating table with the payer's representative. Insurers and managed care companies employ highly skilled negotiating experts. Worse, these experienced negotiators are counting on your representative to be much less skilled and informed. The good news is that you can correct this imbalance—and procure better reimbursement rates or terms—by following four basic steps to prepare for contract negotiations:

1. Assess your position
2. Set realistic and attainable goals
3. Develop a negotiation mindset
4. Know when to accept a compromise or walk away.

Step 1: *Where Do You Stand?*

Before entering into payer contract negotiations, you must conduct an objective assessment of the strengths and weaknesses of your cancer program, and then compare these findings to your payer's strengths and weaknesses. This analysis not only helps you understand your starting position, but also helps you develop strategies for getting what you want from the contract negotiation. Begin by answering these questions:

- *Who is our competition?* If you are the payer's sole service provider, you already have a powerful negotiating chip.
- *What is the market capacity?* If available capacity is low, the payer cannot afford to have you leave its network—another powerful position for cancer centers and practices.
- *What is our relationship with referrers?* The payer or managed care company will not want to alienate its referring physicians by losing your services.
- *What is our payer mix?* A diversified payer mix is just as valuable as a diversified investment portfolio and for the same reasons.
- *What is our market position?* If you are a leader in your marketplace, the payer will recognize that subscribers (patients) need you.
- *What are our payer fee schedules?* Payers know they will need to compete with what others are paying for services. Conversely, even the largest payers will not agree to pay significantly more than other smaller payers.

You should also assess your payer's starting position and try to anticipate its strategy. You can do this by mining the wealth of public information available from the Internet, quarterly and annual financial reports, and the state Department of Insurance. You can also obtain a great deal of information from insurance brokers, who are often happy to share their inside knowledge. Some payer weaknesses might include:

- *Market position*. If this payer is not a leader in your market, it should be willing to offer more attractive terms.
- *Competition*. If others are wooing this payer's customers, it will probably work harder to strike a deal that keeps you in its network.
- *Current performance*. If a payer's growth is slowing, it probably cannot afford to lose more business.
- *Intangibles*. Look for other factors that might compromise the strength of the payer's negotiating position, such as issues with the state Department of Insurance, a new management team, or negative media publicity.
- *Corporate mandates.* Often management sets goals for keeping or growing business. These mandates will certainly influence a payer's willingness to meet your terms.

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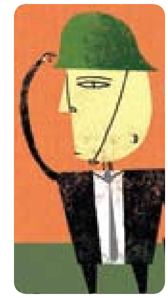

Step 2: *Set Realistic and Attainable Goals*

Know what you want from your payer contract negotiations. While this statement may seem like common sense, you would be surprised by the number of providers who come to the negotiation table without clearly defined expectations and supporting documentation. Providers may want specific language or terms in their payer contracts for a variety of reasons.

If you are seeking increased reimbursement, for example, you should be able to state the fee you require and why. The amount might be based on what other payers are offering, a percentage over what Medicare pays, or a detailed analysis of your actual costs for delivering various services.

Or perhaps your cancer center or oncology practice is planning to add locations or enter into a joint venture during the contract term. In this scenario, it may be important for you to ensure that any terms negotiated will automatically extend to any new locations and/or partners.

Assuming you have a clear idea of the language and terms you are seeking, next consider the items about which you can negotiate and those which are sacred. Then set your "walk-away point." Some clients have said to me, "I could never afford to just walk away from a payer's contract." In response, I say, "Then you would perform your services for free?" Of course, they reply that they wouldn't, and together we figure out the point between "free" and the amount they are seeking that would cause us to walk away from the deal. Providers do not have to accept a bad deal. Remember, if you lose a little bit of money on each patient, there is simply no way to make these losses up on volume.

Step 3: *Develop a Negotiation Mindset*

Negotiation is a process. You may not hit a home run the first time at bat, but do not give up. Every item or term in the contract can be traded. As stated earlier, the point of negotiation is to present and leverage your strengths—while simultaneously exploiting your adversary's weaknesses—to obtain your goals. Obviously, the best way to prepare for payer contract negotiations is to come to the table armed with relevant facts and data (such as operational reports and market analyses) that support your position. These data help establish the basis for your proposals, and may also help you "reason" your way to a successful agreement with your payer.

On the other hand, payer negotiators use many tactics—some more forthright than others—to distract you, derail your efforts, and gain an advantage as contract negotiations proceed. Being aware of these tactics can prevent you from falling victim to them, or give you ideas that you can use yourself. If you've ever done business with a car dealer, you will probably recognize some of these tactics:

- *Limit of Authority.* An example of this tactic might be, "I think you deserve it, but I'll have to clear it with my district manager." Payers use this tactic to delay negotiations or divert responsibility for refusing a proposal.
- *Delay Tactics.* Some payers will keep negotiations going indefinitely in hopes of simply wearing you down and getting you to accept their terms. Many payers refer to this tactic as "Our Lady of Perpetual Negotiations."
- *Funny Math.* Insurers and managed care companies are developed and staffed by actuaries, who are very good at being "creative" with numbers and statistics. Be very careful with any analysis that comes from the other side during contract negotiations. As an example, a payer may bring to the table a proposal indicating a 5 percent increase in revenue. While this amount may be true if you look at a straight average of the fees, performing a weighted average analysis, weighting the codes you bill more frequently, may result in an increase of only 1 percent. This type of financial analysis is not an accident; it is an intentional strategy used by many payers.
- *All or Nothing.* This is a bundling tactic whereby the negotiator says you need to contract for all or none of the payer's covered procedures. This strategy is often used by payers to change the scope of the negotiation.
- *Indifference.* With this tactic, a negotiator assumes a "take it or leave it" stance, pretending not to care whether or not you renew your contract. The posturing communicates a superior advantage (which may or may not be true) and attempts to nullify your negotiating points.

These negotiation tactics are merely a preview of what the payer's representative may throw at you. Keep in mind, however, that providers have several tactics in their arsenal. Many of these strategies involve painting the payer as the "bad guy" in the healthcare system. Most important: understand that not all strategies will work in each situation. Instead providers should use the environmental analysis they previously conducted to identify their best contracting strategies, including.

- *Musical Chairs.* In this scenario, you simultaneously notify all your payers that you want to renegotiate your contracts, with the ultimate goal of eliminating one of them. This strategy immediately puts payers in the difficult position of trying to negotiate quickly so that they are not the one left standing without a chair.
- *The Payers' Report Card.* You can indirectly bring your patients into contract negotiations. For example, post in your office or mail to your patients details of your payers' past performance record. When insurers know that patients are seeing their report card, they will want to do better.
- *Capacity Issues.* In markets where excess capacity for

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One of these key negotiation skills may mean the difference between a good contract and one that can ruin your business.

- ✔ **Never Negotiate Against Yourself.** When the other side says, "You have to do better than that," do not revise your proposal. Make your payer respond with an actual counter proposal. Any time you revise your position without making your payer submit a counter proposal you are doing their job for them by negotiating against yourself.

- ✔ **Only Respond to Offers—Not Questions.** A skilled car salesman asks a great deal of questions, "If I can get the price of this car down to $30,000, do we have a deal?" The problem with responding to this question is that it's *only* a question and *not* an offer. The correct response should be, "I don't know. *Can* you get the price down to $30,000?" Force your payer to make an offer that you can respond to. Do not answer questions because it only establishes a position that payers can work from without getting anything out of the other side.

- ✔ **Accept a Partial Concession to Keep the Negotiation Moving.** The art of contract negotiation is all about making concessions and getting concessions from the other side. Some people enter into negotiations thinking they are going to get everything they want. Trust me, that scenario rarely happens. Keeping in mind your ultimate goal, accept and make concessions that continue to move you to that final goal.

- ✔ **Stay Focused on Negotiation Issues.** Remember payer contract negotiation is a business transaction—not personal. Never let payers distract you from negotiations with issues that are not part of the contract itself.

- ✔ **Consider Giving up Something to Gain Something.** Many times negotiation involves trading. Give payers an issue that they need in exchange for an issue that you need. The main goal is to make sure that you always try to get something in return for every concession you make.

- ✔ **Know That "I Can't" Only Means "I Won't."** In a negotiation, it is critical that you do not allow the other side to say "I can't." If you make a proposal that the payer says they "can't" accept, challenge them. Point out that they could accept the proposal if they wanted to, and that what they really should say is that they "won't" accept your terms. This strategy may seem like you are playing semantics, but it is vitally important. Once your payer says they "won't" do something, the door for negotiations is immediately opened. "Why won't you accept the proposal?" and "What would you accept?" are two responses that engage the negotiation process.

- ✔ **Be Prepared.** I use the analogy: don't go into a gunfight armed with a knife. If an unskilled negotiator enters into a negotiation without following the correct process and doing the work necessary for the process ahead of time the outcome is likely to be ugly. Don't fall into this trap. Be prepared and your chances of success go up dramatically.

the services you provide does not exist or where you are the only treatment option, ask your payer, "If we don't provide lifesaving services to your clients, who will?" One of my clients recently terminated the contract with its second largest payer. Because of very little market capacity, this cancer center has seen an almost zero drop in the number of patients covered by that payer. Today my client is seeing and treating the same patients and receiving higher rates.

- *Referring Physician Disruption*. Physicians always want to work with the best. If your community cancer center or oncology practice offers high-end, skilled services, point out to your payer that losing your business will disrupt the referring physicians' practices.
- *Patient Donations.* I know of one practice that requested patients to make a donation to cover the difference between what their procedure costs and the amount their payer was reimbursing. Subtle, but effective.

Step 4: *Accept a Compromise or Walk Away*

While many other facts and tactics might prove useful in the course of payer contract negotiations, at some point you will feel that you have discussed all the issues and made all the trade-offs possible. When the investment in additional negotiation outweighs the amount to be gained, you should review the current proposal in terms of your goals and either agree to a new contract or terminate.

And the work is not over once you have an agreement in hand. Review the contract language carefully. If language or terms are vague or confusing, never assume it means what you think it means. Ask for clarification or rewording. Then sign the contract and congratulate yourself on a successful negotiation!

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