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Lori Bielinski, Executive Director  
Washington State Chiropractic Association  
21400 International Blvd. Suite 207  
SeaTac, Washington 98198

Dear Lori,

Below is my review of the Complementary Healthcare Plans "Professional Services Agreement" dated 01.29.04. The contract comes with a packet of information that includes cover letters, a description of its provider discount program and a CD that contains both its provider and billing manuals. A separate provider discount program is included for optional acceptance as an attachment to the main provider agreement.

Overall, the contract is both detailed and clearly written. The contract addresses a number of issues that have arisen over the past few years concerning particular billing and service practices. For example, paragraph 2.1 explicitly relieves providers from conformance to the terms and conditions of a payer if these terms and conditions are not set forth in Attachment A [presumably Attachment A will contain all the terms and conditions of various payers]. Additionally, the contract mostly conforms to Washington insurance regulations governing provider agreements. For example, paragraph 1.10 states CHP's compliance with Washington prompt claim payment regulations. I have not verified whether this contract was filed with and approved by the Washington Office of Insurance Commissioner (OIC).

Having noted some ways in which the contract is well written, there are a number of issues raised by the contract. Some of these issues require changes, others require clarification. As a minor nitpick, the page numbering is wrong – [e.g. page 1 of 1, page 2 of 2...].

### *HIPAA and Confidentiality*

Although the contract makes reference to paper claim submission and does not require HIPAA compliance for non-covered entities, CHP will act as a provider's agent and attorney-in-fact [1.1] & [6.1]. Therefore, if CHP converts paper claims submitted by providers to electronic format for payer requirements, the provider would be subject to HIPAA since CHP would be acting as a billing agent submitting electronic claims. I do not know how CHP plans to handle paper claims for further processing.

The contract contains a paragraph [5.2] explicitly addressing HIPAA requirements. Among these provisions is a bizarre statement that the provider contract itself is subject to HIPAA privacy. This notion is flat wrong. Paragraph 5.2(a) states that "practitioner understands and agrees that this Agreement and certain data...may be subject to [HIPAA]" Without doubt, some data may be subject to HIPAA but I have never heard someone assert that a provider agreement was subject to HIPAA privacy protection. This statement regarding the contract and HIPAA is consistent with other provisions of the contract that limit disclosure of the contract [5.1(c)]. Apart from limiting disclosure of compensation or similar payer terms that may be contained in an Attachment A, there is simply no reason to prohibit disclosure of the terms and conditions of the contract that must be publicly filed for approval in any case.

### *Provider liability for coverage determinations*

In keeping with a growing and distasteful trend in provider contracting, the provider assumes liability for both patient misrepresentations of coverage and payer mistakes. On the one hand, it is not unreasonable to hold the provider liable for patient misrepresentations about coverage since coverage can be verified. On the other hand, it is both wrong and illegal to state that the provider acknowledges that a response from either CHP or payer to a coverage question is not a guarantee or an authorization for payment [2.4]. Why make the inquiry at all if the answer doesn't bind the payer? Further, if a payer retroactively terminates a covered person [e.g. for non-payment of premiums], the provider must bill the patient for any services that were previously thought to be covered and presumably must cough up any payments made by the payer. These provisions violate WAC 284-43-410.

*Participation fee*

Although the cover letter accompanying the contract waives the initial participation fee [the paragraph is crossed out by ink], the provider agrees to pay CHP a management fee, an initial participation fee, and an annual participation fee depending in part, upon payer fees imposed upon CHP. [2.7]

*Quality Commission Complaints*

The failure of a provider to give immediate written notice to CHP of any formal complaint about the provider to any governmental body constitutes a material breach of contract subject to immediate contract termination.

*Claim and care documentation*

CHP may deny any claim in cases where either CHP or the payer determines in their sole discretion that documentation of care is inadequate. If denied for lack of documentation, the provider is prohibited from billing the patient.

Let me know if you have questions about other contract provisions. I have only highlighted those provisions that may be of concern to your members.

Best regards,



John S Conniff  
Attorney