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Lori Bielinski

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Subject: Great-West Healthcare of Washington Physician Agreement

Dear Lori,

I have reviewed the Great-West Physician Agreement as requested. Below are my comments. Overall, the Great-West contract is sloppy. Although the contract is proposed for chiropractors, trying to make a physician-based agreement apply creates problems as well. However, the contract does largely comply with Washington state provider agreement standards if you make assumptions and read between the lines. Below are my specific comments relating to particular sections.

- 1. Introductory clauses** It is rare you find problems in the "Whereas" clauses of a contract. These clauses should essentially state the existing facts and intent. Here the "Contracting Physician" is mandated to provide care to covered persons. The clause should state that the person provides health care services in general and later that the parties are entering into the agreement so that these services can be extended to covered persons. Overall, the contract should use a practitioner neutral term so that it makes more sense to non-physicians.
- 2. Company status** In the first whereas clause, Great-West declares that it is a Health Care Service Contractor and a "managed care organization." Later in section 3(a) & (c) of company responsibilities, Great-West declares itself to be an HMO and promises to comply with HMO laws. These clauses make no mention of state HCSC laws.
- 3. Definitions**

- a. Under definition 1(b), the initial reference to WAC should be spelled out for the first use Washington Administrative Code.
  - b. The definition of "Company" 1(c) is wrong. "Company" cannot be Great-West and its affiliates as well as any of its self-insured employer customers. Literally, the contract imposes all state laws followed by Great-West on self-funded employers as well as creates interesting legal propositions. The definition is not saved by the vague "as appropriate to the context." They should define employers separately if they need to refer to self-funded employers.
  - c. The definition of "Contracting Provider" 1(e) incorporates other terms that are raised to the level of contract terms but not defined. For example, whenever "Contracting Physician" and "Contracting Hospital" are used in the contract, the phrases mean "Contracting Provider." Nevertheless, "Contracting Physician" is the most commonly used term and it is not otherwise defined. Furthermore, the term physician is used throughout thereby creating odd obligations for non-physician providers. Great-West should simply define providers and facilities and then use the terms throughout.
  - d. The definition of "Pre-Certification" 1(m) is defined to mean any "determination" [an undefined word] by the Company under its UR program. Pre-Certification is in fact, a particular type of UR rather than UR itself.
  - e. The definition of "Utilization Management" 1(p) demonstrates my initial observation of sloppy contract drafting. UR is defined to mean the process for determining whether care meets the requirements of "prospective review" including among other types of prospective review "retrospective review." The definition should have simply listed the types of UR reviews included rather than technically incorporate these types of review by inclusion under prospective review.
4. **Termination** Section 2(a) states that providers who lose their malpractice insurance are terminated "automatically and without notice." Therefore, if a provider loses either his or her malpractice coverage or general liability coverage, no care rendered after coverage lapse will be compensated and provider will receive no notice of termination of the provider agreement. This is a rather severe termination provision.
5. **Identification of Covered Persons** In an odd and repetitive placement, section 3(d) of company responsibilities requires the company to identify covered persons with an ID card. At the end of this section is added a

provision stating that the contract does not modify a covered person's health plan with the company. The provision should not be in this section and in fact, is repeated in its entirety in section 12(g).

6. **Contracting Physicians** Under article 4 of the contract, numerous responsibilities are imposed upon "contracting physicians." Earlier that I mentioned the problem of the failure to have a neutral and adequate definition of provider or practitioner. Under section 4(d), a chiropractor signing this contract would be required to promise that all decisions regarding care "are made by or under the supervision of licensed physicians." Note the lower case use of "physicians" which means that the generic and not the definitional use of the word physician is used. This clause is completely unacceptable. I doubt the company intended this meaning; rather, I think the company is using its standard physician agreement and attempting to make it fit other provider types.

Similar problems with such terminology arise throughout the contract. For example, section 4(e) requires 24/7 coverage but requires referral to a "physician" if the chiropractor cannot personally provide care. Presumably, referral to another chiropractor would be the desired interpretation. Similarly, "Contracting Physicians are required by section 4(g) to have hospital privileges. Presumably, the company here intended to refer to physicians.

In sum, any non-physician provider who signs this contract must determine for him or herself which of the contract provisions are intended to apply to all providers or merely to physicians.

7. **Non-Solicitation** Under section 11(d) "Contracting Physicians" are not permitted to engage in any act or practice which would encourage customers of the company to terminate coverage. This clause directly conflicts with the state mandated clause found under section 12(h) (ii) which states that the company cannot "preclude or discourage Covered Person(s) or those paying for their coverage from discussing the comparative merits of different health carriers with Contracting Physician."

Coincidentally, the clause at 12(h) only partially restates the Washington rule which goes on to provide: "This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier." [WAC 284-43-320 (5) (b)]

8. *Conditions* In final and confusing example of sloppy contract drafting, section 12(j) has a title that should be a sentence [the whole title is not underlined]. The title is "Conditions precedent to the implementation of the Health Care Service Contractor Related Provisions of this Agreement." I do not know what a provider signing this contractor is to make of this contract interpretation standard: "All provisions within Agreement relating the [sic] HCSC product are contingent upon Plan [not defined] receiving approval from the State of Washington...and conditioned upon Hospital's availability in the approved service area." In other words, the entire agreement might not be valid contingent upon these other events.

To summarize, it would appear that Great-West is or was an HMO that is or is attempting to become a health care service contractor and has used its physician HMO agreement to create a network required to obtain regulatory approval. That's my educated guess since the contract itself seems to imply this and the contract terms appear to be hastily and sloppily drafted.

Best regards,



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