

# AMA/Federation National Managed Care Contract: Issue Brief IV

## “All Products” Provisions

### **I. What questions should a medical practice consider asking the managed care organization (MCO) prior to signing a managed care agreement containing an all products provision?**

- Does the all products provision specifically identify the products in which the medical practice will be required to participate if the medical practice signs the agreement?
- Is the application of the all products provision limited to products currently offered by the MCO, or does the all products provision require the medical practice to participate in future products offered by the MCO?
- Does the managed care agreement give the medical practice the right to refuse to participate in certain types of products, e.g., workers compensation, Medicare or Medicaid managed care products?
- If the medical practice exercises a right not to participate in one of the MCO’s current or future products, is the MCO prohibited from terminating the agreement or otherwise limiting the practice’s participation in the MCO’s products in which the practice wants to participate?
- Will each product have its own fee schedule, or will the medical practice be paid under a single fee schedule that applies regardless of product?
- What is the volume of patients the medical practice will be expected to treat under each product in which the practice is required to participate?
- Does the agreement prohibit the medical practice from refusing to accept patients whose coverage is provided under one of the MCO’s products if the practice determines that continued acceptance may negatively affect the practice’s financial viability or its ability to treat adequately other patients whose coverage is through other products or non-MCO payers?

### **II. What is an all products provision?**

In general, an all products provision in a managed care agreement requires the contracted medical practice to participate in all of the products currently offered by the MCO, and sometimes requires the practice to also participate in any future MCO products. The term “products” may include, and certainly may not be limited to, a wide range of coverage options, e.g., coverage provided through a health maintenance organization (HMO), HMO point of service product, preferred provider organization (PPO), workers compensation insurance, automobile personal insurance protection, Medicare and/or Medicaid managed care products, high deductible health plans, or coverage provided by self-funded employee health benefit plans.

### **III. Early all products provisions**

In the late 1990s, MCOs primarily used all products provisions to force medical practices that wanted to participate in an MCO's PPO product to participate in the MCO's HMO product as well. Frequently, practices preferred to participate in PPOs because of better reimbursement rates vis-à-vis HMOs, and because HMOs often required practices to assume considerable financial risk for patient care costs. The use of all products provisions was part of an overarching strategy by employers and MCOs to increase HMO enrollment. Some MCOs aggressively enforced all products provisions, e.g., if a medical practice terminated its participation in an HMO product, some MCOs would respond by terminating the practice's participation in the MCO's PPO product, contending that the all products provision permitted the termination.

### **IV. Current all products provisions**

Many managed care agreements offered to medical practices contain an all products provision. As the managed care market has changed since the late 1990s, so too have all products provisions. Generally, because of the "HMO backlash" that occurred in the late 1990s and early 2000s, all products provisions no longer specifically tie PPO participation to HMO participation. Instead, today's all products provisions are usually broader and often require medical practice participation in all of the plans or products offered by the MCO. The following is an example of a type of all products provision that can occur in current managed care agreements:

Medical practice agrees to participate in the plans and other health products as described in this Agreement. MCO reserves the right to introduce, modify, and designate medical practice's participation in plans and products during the term of the Agreement.

A provision like this sample is problematic for at least two reasons. First, the provision does not permit the medical practice to select or negotiate the products or plans with which it will participate. Second, the provision does not impose any limit on the products or plans, current or future, in which the medical practice will be required to participate. Consequently, many all products provisions may require the medical practice to participate in dissimilar products or plans, which may impose a wide variety of different administrative obligations on the medical practice and require the practice to be cognizant of the different payment rules, coding edits, benefit designs and fee schedules that may be associated with each separate product.

### **V. Reviewing all products clauses/possible noncompliance**

When offered a managed care agreement containing an all products provision, the medical practice's primary concern is likely to focus on the effect that the provision may have on the financial viability of the medical practice or on the practice's ability to provide appropriate medical care. Accordingly, it is important that the practice review the provision and possibly seek clarification regarding the kinds of issues identified in I. above. For example, the sample provision in IV. does not specify the products, or types of products, in which the medical practice may be required to participate. Obtaining clarification on product specifics is important because forced participation in a particular product or product type may have an adverse impact on practice operations or finances, e.g., a product type's administrative requirements may increase the practice's "hassle factor" and cost of doing business with the MCO. Obtaining clarification concerning plan or product type may enable the medical practice to better predict this hassle factor and subsequently guard against signing a contract that may be fraught with administrative requirements or provide inadequate payments.

The medical practice should also ascertain whether the MCO will reimburse the practice differently under each product in which the practice participates, e.g., if each product has its own fee schedule, or if the medical practice will be paid under a single fee schedule regardless of product. If each product has its own fee schedule, the practice obtaining each fee schedule is a vital step in determining the agreement's value. If, however, the MCO will use only one fee schedule, it is particularly important that the practice clearly understand the type of products in which it will be required to participate, because some products, e.g., workers' compensation insurance products impose significantly greater administrative requirements and are therefore more expensive

for the participating medical practice relative to some other product types. Consequently, a fee schedule that may be acceptable for some product types may be wholly inadequate for other types of products.

Seeking information concerning the volume of covered services that the practice may be expected to provide to subscribers who are covered under each of the products, in which the medical practice may be required to participate is another issue concerning which the practice may want to obtain clarification, if possible. Although disclosure of complete and accurate fee schedules is useful to the practice, fee schedules themselves do not provide any information concerning covered service volume and therefore may not present the full picture concerning what effect, negative or positive, an all products provision may have on the practice. For example, even if some of the products in which the practice will be required to participate have acceptable fee schedules, most of the covered services provided by the practice under the agreement are furnished to subscribers whose coverage is under a product with an inadequate or marginal fee schedule, then entering into a managed care agreement may not be as sound a financial decision as the practice may have initially anticipated.

## **VI. State restrictions**

At least 11 states (Alaska, Arkansas, District of Columbia, Florida, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Ohio and Virginia) have enacted statutes restricting the use of all products provisions in managed care agreements. Medical practices providing services in those states should not assume that the managed care agreements offered to them comply with these statutes because MCOs, particularly those that operate nationally, may offer the practice a “national” contract that may not endeavor to comply with an individual state’s all product provision’s restrictions. As further described in VI., the 2009 National Managed Care Contract (NMCC) Section 3.3 Participation in Products contains provisions that are based on these laws and section 3.3’s provisions should serve as a ready-made resource that medical practices can use to check particular state compliance and present possible negotiation alternatives to MCOs. Visit the American Medical Association’s (AMA) Web site for [additional information](#) concerning state all product provision restrictions. And at least two states (California and Colorado) have enacted statutes that permit the practice in certain circumstances to refuse to accept additional subscribers. See NMCC Section 5.3 Right to Close Practice.

## **VII. How the NMCC addresses all products provisions**

As already discussed, a number of states have adopted significant restrictions on the use of all-products provisions in managed care agreements, and NMCC section 3.3 is based on those restrictions. For example, section 3.3.2 is derived from Kentucky and Alaska laws stating that an MCO cannot require the medical practice to agree to participate in all of the MCO’s current products as a condition for the medical practice to participate in one of the MCO’s current products. Section 3.3.3 is based on an Ohio statute stating that an MCO cannot require the medical practice to participate in a future product offered by the MCO as a condition for participating in one of the MCO’s current products. Section 3.3.4 conforms to a Florida statute that prohibits the MCO from requiring a medical practice, as a condition of participating in one of the MCO’s product offerings, to accept the terms of other provider contracts that involve other products offered by the MCO. Section 3.3.5 is based on a Maryland statute stating that the medical practice may refuse to participate in any workers’ compensation product offered by an MCO, notwithstanding the presence of an all products provision. Finally, section 3.3.6 states that the MCO cannot terminate or fail to honor the NMCC solely because the medical practice refused to participate in one of the MCO’s products.