

“All Products” Provisions

What is an “all products” provision?

“All products” provisions have evolved since they first started appearing in managed care contracts in the late-1990s. In general, an “all products” provision is a clause in a managed care organization (MCO) physician contract that requires physicians to participate in all of the MCO products, sometimes extending to future products.

In the late-1990s, “all products” provisions were used primarily to force physicians who wanted to participate in a MCO’s PPO product to participate in the MCO’s HMO product, a dramatically different product that often requires physicians to assume insurance risk. This forced participation was part of a strategy by employers and MCOs to increase employee enrollment in HMOs. Some MCOs were aggressive in enforcing “all products” provisions. A physician group or network would seek to terminate an HMO contract, and the MCO would respond by terminating the PPO contract, contending that the “all products” provisions allowed such action.

Thanks to aggressive advocacy efforts by the AMA and state medical associations, a number of MCOs pulled back on their insistence on mandatory participation in HMOs as a condition of participating in PPOs. In addition, as part of the settlements reached in class action lawsuits brought by physicians and a number of state and county medical associations, at least two MCOs have agreed that they will not condition participation in PPOs on participation in HMOs. To learn more about the class action settlements, visit <http://www.hmosettlements.com>.

The New “All Products” Problem

It is clear that “all products” provisions have not disappeared. Because of changes in the market, “all products” policies have changed as well. Generally, they no longer specifically tie PPO participation to HMO participation. Instead, these clauses are broader and often require physician participation in all of the plans offered by the MCO.

This is in part because of the backlash against HMOs in the past several years and the continuing patient demand for health insurance products that offer more choice. It is also in part because of the rapid evolution and proliferation of new products including consumer-directed products. According to a Kaiser Family Foundation Study, in 2004, 25% of commercially insured Americans were in HMOs, compared with 31% in 1996. By comparison, in 2004, 55% of commercially insured Americans were in PPOs, nearly doubling since 1996.

An example of a new generation of “all products” provision follows:

Physician agrees to participate in the plans and other health products as described in the Product Participation Schedule. MCO reserves the right to introduce, modify, and designate physician’s participation in plans and products during the term of the agreement.

This sample “all products” provision is problematic for two reasons. First, if the physician does not have the ability to affirmatively designate which

“products” are included on the Product Participation Schedule, this provision functions as an “all products” provision. Second, the provision requires physicians’ participation in any and all future products without any prior negotiation. This provision makes clear that once the physician has signed a contract, he or she has no ability to opt-out of products, even if participating in those products has an adverse impact on his or her ability to treat patients or to manage the practice. Even if a physician initially had some ability to negotiate product participation, that ability is rendered meaningless.

Why are non-negotiable “all products” provisions and policies objectionable?

In the current environment where new product and plan types are being developed and introduced at a rapid rate, physicians must retain the ability to select which products and plans in which to participate. Physicians must have the ability to review and assess the product, including the fee schedule, so they can make an informed business decision about participation. “All products” provisions coerce physicians into participating in products. This includes forced participation in future products with an unknown impact on patients and with unknown and unpredictable business risk.

What is the AMA doing to combat “all products” provisions?

The AMA has been aggressively fighting mandatory “all products” provisions and identifying new trends in this arena. The AMA has developed model state legislation to prohibit “all products” provisions or policies. Eight states (Alaska, Arkansas, Florida, Indiana, Kentucky, Maryland, Massachusetts, and Virginia) have

passed legislation to limit the use of “all products” provisions. While those laws were originally developed in the context of MCO’s tying PPO participation to HMO participation, most of them are broad enough to cover the new evolution of “all products” provisions.

How does the AMA Model Managed Care Contract address this issue?

Section 1.12 of the AMA Model Managed Care Contract specifically states that the contract cannot be construed to require physicians to participate in “all products” as a condition of participating in any individual product. The MCO and physician should develop separate business terms (including compensation) for each and every product, although all terms may be collected within a single contract. Under this provision, if the MCO introduces a new product, it could not unilaterally designate the physician as a participant. If the physician chooses to participate, the MCO would then have to reach an agreement with the physician with new business terms for the new product. In addition, either party may terminate plans or products individually.