

# 5 Hidden Pitfalls

## Optimizing your therapy partnerships & contracts



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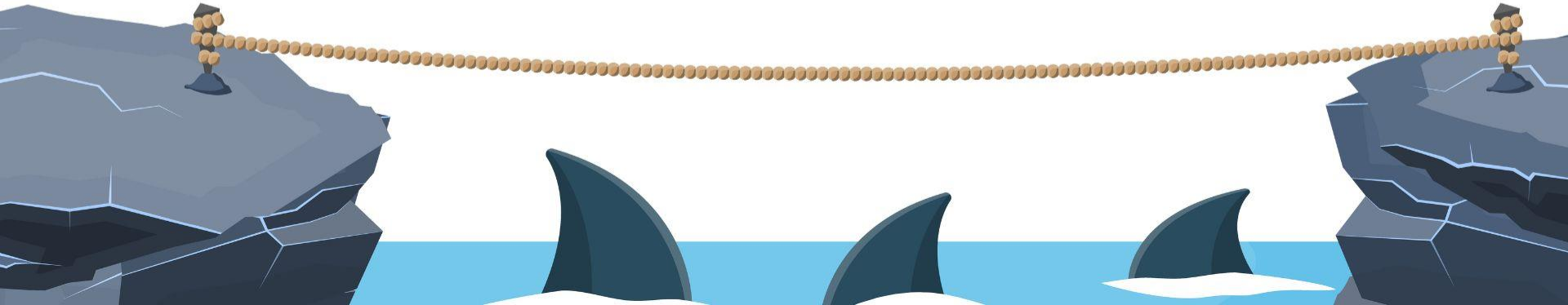
**simple.**  
*a Netsmart solution*



# Your Speaker



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*Owner, Seagrove Rehab Partners*



# Objectives

- Identify 5 potential pitfalls in therapy contracts that are not always obvious.
- Understand the therapy indemnification clause and what the indemnification clause actually covers in case of denial.
- Be able to identify places where the contract can be negotiated to save on costs and generate revenue.
- Understand the hidden costs of exiting a therapy contract and how to keep your options open for the future.



# Ground Rules

- There are sections of this presentation that require audience participation.
- Polling questions
- Ask questions as we go
- You must laugh at my jokes!

# Legal Disclaimer

- I am not a lawyer, and nothing in this presentation should be interpreted as legal advice. You should discuss your situation with legal counsel before taking action.



# Introduction

- Background in therapy management and contracting.
- I have reviewed hundreds of therapy contracts.
- Reviewed/Adjusted/Modified contracts for therapy company and for SNFs.
- Contracts often lean towards the author.
- There are good and bad therapy contractors, and thus there are good and bad therapy contracts.



# Who are the Players?

- If you are dealing with some of the larger, national providers, they have hundreds of million in revenue per year which means that they also employ a team of lawyers to create these contracts.
- Discuss big fish, small pond mentality.
- They came to you for your business, so you are in the driver's seat.



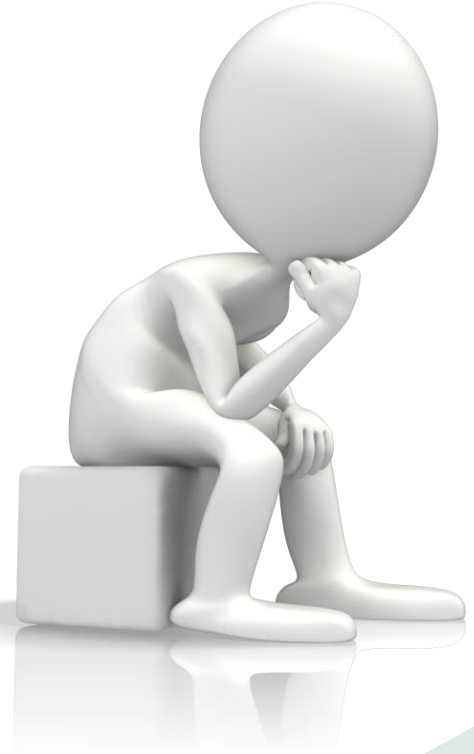
# Who are the Players?

- There is quite a bit of competition out there competing for the same facilities.
- They will likely do more than you think they will to get your business.
- Be sure that you are negotiating an “arm’s length” deal.
- Doing business with a national provider may bring it’s own liability issues (e.g. Rehabcare settlement).



# Philosophy

- Level the playing field.
- Create the most future opportunity for the facility.
- Give the SNF the most flexibility in the coming years.



# In Practice

- Most contractors bid for Part A in order to access the Part B.
- Discussion: Part A vs. Part B metrics and billing differences.



# In Practice

- The contractor is intending to take 18-33% of what you pay them back to the home office each month.
- Let's jump into the components...



# #1

## Multiple Procedure Payment Reduction Policy (MPPR).



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# MPPR

- Started in 2012.
- Impacts one part of the CPT codes used for Part B services.
- Is the reduction in reimbursement after the highest paying CPT code per treatment day to the tune of 9-12% per additional CPT code. With higher paying CPT codes, this \$\$ increases.
- 50% reduction in one component of the CPT code.
- Some other commercial insurers have also adopted MPPR practices.

# MPPR

- CPT code construction
- Liability expense – covers liability
- \*\*Practice expense – covers gloves, gowns, water, power, etc.
- Labor expense – covers labor expense
- Geographic Index – adjusts the entire fee based on where you are in the country.



# MPPR

- Are you sharing the MPPR reduction with your contractor?
- This can have a huge impact on whether or not Part B therapy is generating any revenue for the facility or costing you money.
- Let's look at an example:

# MPPR: Example

CPT	Description	Fee	MPPR rate	75%	75% w/MPPR
<b>Physical Therapy Eval &amp; Treatment</b>					
97161	PT Evaluation	\$87.14	\$85.75	\$65.36	\$64.31
97110	Gait Training	\$31.20	\$23.66	\$23.40	\$17.75
97530	Therapeutic Activities	\$40.14	\$27.88	\$30.11	\$20.91
<b>Occupational Therapy Eval &amp; Treatment</b>					
97165	OT Evaluation	\$92.50	\$92.50	\$69.38	\$69.38
97535	ADL Retraining	\$34.77	\$25.42	\$26.08	\$19.07
97530	Therapeutic Activities	\$40.14	\$27.88	\$30.11	\$20.91
<b>Totals</b>		<b>\$325.89</b>	<b>\$283.09</b>	<b>\$244.42</b>	<b>\$212.32</b>
				<b>86%</b>	<b>75%</b>

- Facility reimbursed \$226.48 (80% of Fee Schedule) by Medicare



# MPPR: Take Away

- Consider negotiating to share the MPPR-adjusted rate.
- Or reduce the Med B negotiated rate if you are not sharing the MPPR adjustment.





#2

## Non-competition/ Non-solicitation clause



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# Poll Question

- Can you hire your contract therapy staff as your own employees even if you have a non-compete clause?
- A. Yes
- B. No

# Non-compete/Non-solicitation Clauses

- Designed to limit your future options.
- Used as a deterrent when providers are looking to make a change.
- Discuss cost of keeping therapists when non-compete is in place.



# Non-compete/Non-solicitation Clauses

- Does not require contractor to continue earning your business on an ongoing basis.
- They do have their place.
- Allows the contractor to recoup some recruiting and training costs.

# Non-compete/Non-solicitation Clauses

- Are non-compete clauses enforceable?
- Right to work state.
- Is the non-compete with the facility or the therapy staff?
- If facility management changes, does the contract transfer?
- Scare tactic between contractor and staff if you try to hire them.



# Non-compete/Non-solicitation Clauses

## Take Away Points to Consider:

- Negotiate to have them to diminish over time.
- Negotiate to have them removed altogether.
- ALWAYS exclude existing staff from the non-compete.

#3

# Termination Notice



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# Termination Notice

- Think of this as how long you want the employee you just fired hanging around.
- We recommend you consider a 30-day notice, however, we have seen 60-day and even 90-day notices.

# Termination Notice

- Are you limited as to when you can give the notice? Possibly only on the anniversary date?
- In an “at-will to work” state, you can terminate an employee at any time with or without cause.
- Depending on your contract’s termination notice requirement, you may not be able to terminate your contractor at any time.



# Termination Notice

- Think of this as your contractor earning your business month-over-month and year-over-year.
- **Take away to consider:** Negotiate to allow termination at any time.



#4

# Indemnification Clause



# Indemnification Clause

- Do you know what your indemnification clause actually indemnifies you for?



# Indemnification Clause

- Initial response depends on type of ADR received.
- MAC/RAC/SMRC – respond appropriately.
- ZPIC/UPIC, DOJ, OIG – First call should be to your lawyer. In this case, fraud is suspected.



# Indemnification Clause

- Typically the contract spells out how long you have to notify the contractor.
- I have seen as short as 5 days and as long as 14 days, but the clock has started once the notice has been received.
- Let's discuss an example:



# Indemnification Clause - Example

- Facility receives ADR for a Part A patient. The facility was reimbursed \$500/day for that patient's 10-day stay.
- The facility paid the contractor \$100/day for the therapy services.



# Indemnification Clause - Example

- The indemnification clause says that the contractor will pay back the facility \$100/day for the days denied.
- This typically will not happen until the appeals are exhausted and finalized. This could take years.
- Note that the facility, in this case, will lose a net of \$400/day for the days denied.

# Indemnification Clause

- Take away to consider:
- Set your notification timeline at least 14 days out from notification.
- Be sure that the staff opening the mail are on the lookout for this type of notification.

#5 (Added 1/1/2022)

# Therapy Assistant Reimbursement Rates



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# Poll Question

- Are you sharing the therapy assistant payment reduction with your contractor?
  - A. Yes
  - B. No
  - C. Not Sure





# Giveaway time!

# Poll Question

- Are you sharing the therapy assistant payment reduction with your contractor?
  - A. Yes
  - B. No
  - C. Not Sure

# Assistant Reimbursement Reduction

- Are you sharing the assistant payment reduction with your contractor?
- As part of the MPFS Final Rule for 2022, therapy assistant services for Medicare Part B patients are being reimbursed at 85% of the fee schedule.

# Assistant Reimbursement Reduction

- Contract likely says that you pay a % of the MPFS for Med B services to the contractor.
- Is your contractor mitigating the reduction?
- Other payors following suit.





# Assistant Reimbursement Reduction

- Take away to consider:
- Adjust contract so that you are sharing this reduced reimbursement with the therapy contractor.



# Bonus

*For those of you in a Continuing Care Retirement Community, there is a bonus key issue to make sure you don't overlook in addition to those six:*

Depending on how (contractually) the therapy services are being provided in your IL and AL, there could be hundreds of thousands of dollars literally walking out the door year-over-year.



# Bonus – CCRC or IL/AL

- Therapy services provided in IL/AL settings where there is an on-campus SNF can be billed in a few different ways:
- In most states, therapy services provided at your on-campus IL/AL can be billed through your SNF PTAN/provider number.
- Therapy services can be billed by the contractor directly to Medicare or other third-party payer if they have a Rehab Agency (RA) or Private Practice (PTIP) license.

# Bonus – CCRC or IL/AL

- In the RA or PTIP case, the contractor is not revenue sharing with the facility, rather they are paying rent for the space occupied.
- If you go this route, be sure to consider what is Fair Market Value for rent! Which is often *NOT* the same as an AL/IL apartment rental amount.

# Bonus – CCRC or IL/AL

- Revenue share is often preferable for the facility with no rent, as the revenue share is likely much greater than the rent would be.
- In the revenue share model, the SNF will bill for services and not the contractor.
- I have seen facilities lose out on hundreds of thousands of dollars per year by taking the rent vs. the revenue share.

# CCRC or IL/AL - Example

- Therapy contractor paying \$2,000 per month for rent – the fair market value for retail space in that geographic location.
- The contractor regularly bills \$50,000-\$60,000 in services each month.
- Since there is no revenue share like in the SNF model, the margins in this scenario are even higher.

# CCRC or IL/AL - Example

- If this was a revenue share model like we discussed earlier (75% to the contractor, 25% to the SNF), then the SNF is looking at keeping \$12,500 - \$15,000.
- Understand that there is some more work involved here as the SNF has to process the claim instead of the contractor.
- In the revenue share example, the contractor is not paying rent.

# CCRC or IL/AL - Example

- If you are in this scenario (contractor paying rent), the CCRC often has no idea of how much the contractor is billing each month.
- This may be something that you want to look in to.



# Contemplating Other Therapy Models?



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# Therapy Service Options

- Contract
- In-House
- In-House Management Model



# Contract

- You are probably familiar with this model.
- Pay a premium for therapy services. 18-30+% of what you pay them goes back to therapy contractor's home office.
- Lack of control over who comes and goes from facility.
- Lack of control over what the therapists can and cannot do.
- Having to deal with all the issues outlined in this presentation.



# In-House

- Unless you have a therapy management structure in your organization, no one understands what the therapists should and shouldn't be doing.
- Often operate at very low productivity.
- Often at increased liability.



# In-House

- The administrator often doesn't speak "therapy". This leads to lack of:
  - Questioning the therapy staff about clinical issues.
  - Questioning what should and shouldn't be billed.
  - Holding therapists accountable for billable time.



# In-House

- Therapists often giving away services.
  - This creates billing and liability issues.
  - Undervalues therapy services.
  - Does not collect valuable reimbursement for the facility.
  - In case-mix states, may underrepresent your case-mix.



# In-House Management Model

- Hybrid of the two. This can be the best of both worlds.
- If managed well, allows you to keep the premium you were paying the therapy contractor.
- Contractors will often offer this model – buyer beware!

# In-House Management Model

- In this model, look for a management company that replaces your contractor.
- Software
- Continuing Education Units for staff
- Denials Management
- Compliance
- Recruiting





# In-House Management Model

- Recruiting in an in-house model can be much easier than in a contract model.



# In-House Management Model

- Oversight
- You need someone on your team who can look closely at what the therapists are doing and help make appropriate adjustments.
- There is usually either a flat fee or adjusting fee based on management company's fee structure, but much less than what you were paying the contractor.





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Interested in learning more  
about our In-House Therapy  
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Questions?



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# Thanks for joining us!

[Recording and slides available here](#)

