

# **Contract Mismanagement in Workers Comp Services**

**What needs Fixing**

Frank Pennachio  
Injury Management Partners

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# Objectives

- Fix the problem ... Not the blame
- Identify the drivers of costly, ineffective contractual relationships
- Identify processes to improve outcomes

# The Problem

- Contractual relationships established between Employers and their Workers' Compensation Service Providers create a cycle of misaligned incentives.

# The Problem

- In many instances, “Cost Containment” services are driving up costs and extending disability durations, not reducing them.

# Contracted Services Include:

## Basic TPA Services – Fixed Cost

- First Report intake
- Channeling to Providers
- Compliance forms
- Appointment setting

# Cost Containment Services Include: (VARIABLE COSTS)

- Medical Provider Networks
- Nurse Case Management: Telephonic, Field

# Cost Containment Services Include: (VARIABLE COSTS)

- Bill Review
- Utilization Review & Management

# Plus ... Ancillary Services (VARIABLE COSTS)

- Legal
- Pharmacy (15% of claims cost)
- Physical Therapy
- Imaging

# Plus ... Ancillary Services (VARIABLE COSTS)

- Surveillance
- Transportation
- Interpretation
- Durable Medical Equipment

# Plus ... Ancillary Services (VARIABLE COSTS)

- Medicare Set Asides
- Subrogation
- Vocational Rehabilitation
- Behavioral Health

# In the News

- Sedgwick CMS acquires  
CompManagement  
\$191.5 Million on 09-2006
- Crawford acquires Broadspire  
\$150 Million on 10/2006

# Causes of the Problem

- Increasing Complexity

- Decreasing Injuries

***(“Declines in workers’ compensation claims may harm our results of operations.” – Managed Care Company)***

# Causes of the Problem

- Employers' focus on the wrong things (Squeezing a balloon)
- Broker/Consultant Agenda

# Causes of the Problem

- Request For Proposals Process Failures
- Lack of Standardized Measures
- DNA Programming

# How Do We Know There is a Problem?

“Padded bills, murky disclosures, and controls gaps are among the possible perils when self-insured employers outsource the management of their workers' comp programs”

**David Katz**  
**CFO Magazine**  
**6/9/05**

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# How Do We Know There is a Problem?

“A scathing audit of the workers' compensation system in a Florida school district spotlights the need for tighter employer scrutiny of outsourcers.”

**David Katz**  
**CFO Magazine**  
**7/14//05**

# How Do We Know There is a Problem?

- California Insurance Guarantee Association paid \$66 million in bill-review fees from 2000 to 2007
- Vendor reimbursed as a percentage of savings for each bill reduced.

# How Do We Know There is a Problem?

- The market value of the services was only \$11 million, according to the auditor.
- \$55 million overcharge just for Bill Review

# How Do We Know There is a Problem?

TPA Industry Said to Be a Hotbed of Fraud

(09/12/07) Sacramento, CA

**Jim Sams,**  
**WorkCompCentral**  
**Senior Editor**

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# How Do We Know There is a Problem?

- The workers' compensation fund administrator was fired by Lackawanna County in August, 2007
- Was paid more than twice the amount of basic service fees its contracts required.

# How Do We Know There is a Problem?

N.Y. Comp Board Acts To Pull TPA's License For Misconduct

**BY DANIEL HAYS**  
**NU Online News**  
**April 17, 2008**

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# How Do We Know There is a Problem?

- Managed Care Organization contracts surveyed contained few references to the MCO's responsibility for ensuring the quality of patient care.

Allard E. Dembe

Jay S. Himmelstein

# How Do We Know There is a Problem?

- Four contracts (13 percent) did not mention any of the 19 selected features or other quality-of-care provisions.

Allard E. Dembe

Jay S. Himmelstein

# How Do We Know There is a Problem?

- Six other contracts (19 percent) contained just a cursory reference to one or two of the features.
- Only 3 contracts (10 percent) addressed at least half (10) of the features.

Allard E. Dembe

Jay S. Himmelstein *injury management partners*

# How Do We Know There is a Problem?

- For the most part, the contracts concentrated on specifying the financial, legal and administrative relationship between the purchaser and MCO ...

Allard E. Dembe

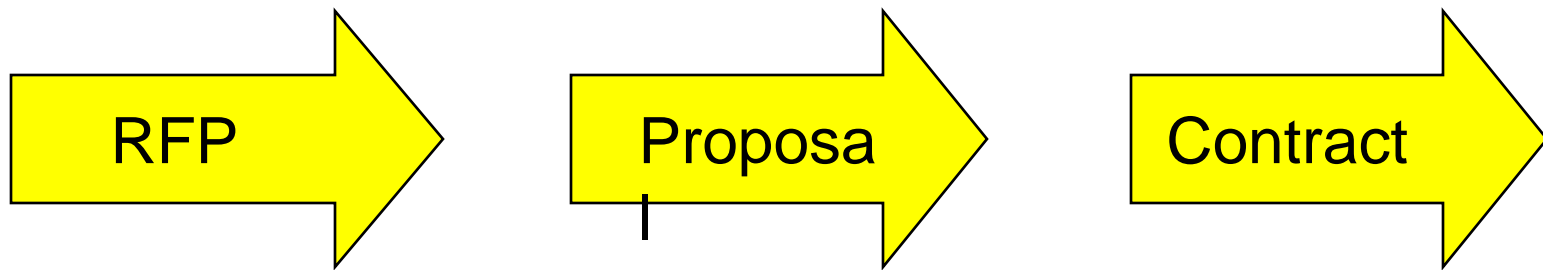
Jay S. Himmelstein

# How Do We Know There is a Problem?

... rather than on describing the specific patient services and benefits to be provided under the plan.

Allard E. Dembe  
Jay S. Himmelstein

# The Process



# Request for Proposals

- Lack specificity on “Cost Containment” Services
- “Provider will provide .....

# Request for Proposals

- Medical Provider Networks
- Nurse Case Management: Telephonic, On-Site
- Bill Review
- Utilization Review & Management

# Medical Provider Networks

- Measuring Network penetration fallacies
- Are you rewarding failure instead of success?

# Nurse Case Management

- What are the referral criteria and guidelines?
- What is being measured besides billable hours?

# Bill Review

- % of “Savings” pricing
- What is “Savings”?

# Utilization Review & Management

- Peer Review – Doctor to Doctor?

# Ancillary Services

- Legal, Pharmacy, Physical Therapy, Imaging, Surveillance, Transportation, Interpretation, Durable Medical Equipment, Medicare Set Asides, Subrogation, Vocational Rehabilitation, and Behavioral Health

# Would You Be Upset If ...

- Rebates, commissions, overrides, and mark ups for these services were not disclosed or transparent

# Challenge

Holding TPAs/MCOs accountable for delivering quality medical care is difficult due to the lack of uniform quality standards or performance measures for workers' compensation cases.

# Contract Provisions

A Method for Ensuring the Quality-of-Care

- Contract language can help turn quality-of-care expectations into reality, or ...
- ... undermine all other cost reduction and productivity improvement processes

# Contract Provisions

A Method for Ensuring the Quality-of-Care

- A powerful mechanism for making TPA/MCOs accountable for quality
- The evidence suggests that few contracts realize this potential.

# Contract Provisions

A Method for Ensuring the Quality-of-Care

- Provide a tangible and enforceable mechanism
  - Standardized performance measures
  - Practice guidelines

# Contract Provisions

A Method for Ensuring the Quality-of-Care

- Obvious... but not easy
- A spreadsheet and a calculator are insufficient tools

# Imprecise Contract Language

“[The MCO] will administer workers’ compensation services for covered persons in accordance with [the MCO’s] standard managed care practices and procedures.”

# Imprecise Contract Language

“[The MCO] shall ensure that quality medical care is provided to eligible insured workers efficiently, purposefully and without waste.”

# Model Contract Language

- Quality Standard
- Performance Measurement

# Model Contract Language Examples

Quality Standard: The MCO shall establish written practice guidelines to ensure that appropriate and necessary care is provided in accordance with available scientific evidence and accepted standards of professional conduct.

# Model Contract Language Examples

Quality Standard: The MCO may adopt practice guidelines promulgated by the American College of Occupational and Environmental Medicine (ACOEM), or other appropriate existing guidelines.

# Model Contract Language Examples

## Performance Measures

- a. The MCO establishes and disseminates practice guidelines to all participating providers.

# Model Contract Language Examples

## Performance Measures

b. The MCO devises a system for monitoring provider adherence to the guidelines.

c. \_\_\_\_\_% (to be negotiated by parties) of care conforms to the guidelines.

# Model Contract Language Examples

[The MCO] must agree to remit to [Employer] any rebates, overrides or similar financial consideration which [The MCO] receives relating to the services provided for [Employer] in dealing with such other organizations.

# Model Contract Language Examples

[The MCO] must agree to provide full disclosure to [Employer] of all payments and fees relating to the services provided for [Employer]. This disclosure must include providing [Employer] , upon request, copies of all contracts which pertain to services, if any, sub-contracted by the [The MCO].

# Summary

- It is critical for employers to treat Service Providers as partners and lead the way for mutually beneficial contractual relationships
- Transparency is needed on all sides of the relationship

# Summary

- Employers must demand specific quality-of-care features from service providers
- Use contract language as means for articulating expectations
- Hold service providers responsible for delivering the agreed-upon services and results.

# Questions