KATZ BRUNNER HEALTHCARE

# NO-CONTRACT PLANS

An increasing number of health plans (cost-share ministries, employer-sponsored "referenced based" coverage, "Medicare plus" plans, etc.) are electing not to enter into contractual agreements with hospitals through an established provider network. Instead, these plans seek to limit payment for hospital services by repricing at a plan-determined amount that is far below traditional commercial rates, typically based upon a percentage of Medicare reimbursement (which is how "Medicare plus" plans got their name).

By accepting the patient's member ID card and providing healthcare services, the hospital may also be agreeing to accept the plan-determined reimbursement amount as payment in full. This is accomplished through language on the ID card, EOB, or remittance check along the lines of:

> *"We restrict hospital charges to the amount the Plan deems reasonable."*
>
> *"By accepting an assignment of benefits from the beneficiary, a hospital waives any right to recover payment more than the Plan determined Allowable Claim Limit."*

Beneficiaries of these no-contract plans are instructed to only pay the out-of-pocket amount calculated by the plan, and to contact the plan if they receive a balance bill. The plan asks the beneficiary that receives a balance bill to authorize legal counsel retained by the plan to represent the beneficiary's interests associated with the hospital's services and balance billing. In turn, the plan aggressively defends against further collection actions, demanding the hospital appeal the determination through the plan's dispute resolution process (which would be a waste of time for the hospital, since the plan's dispute resolution process simply determines if the plan's self-determined reimbursement amount was paid).

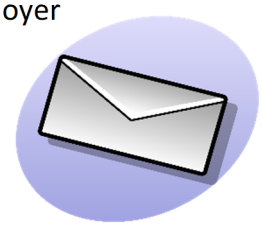
## What can hospitals do about this?

1. **IDENTIFY PATIENTS WITH THIS COVERAGE.** It is difficult to identify no-contract plans. Often, their cards display PHCS/Multiplan or other network logos (which are applicable only to physician services, <u>not hospital coverage</u>) and hide key legal terms in very tiny font. Moreover, because there are so many no-contract plans out there, it is not feasible to create a comprehensive "cheat sheet" for registration staff. As an alternative, consider doing the opposite: create a reference listing of insurance cards that your hospital has contracted with, and instruct registration staff to flag any card that does not match that

list. These flagged accounts should be further reviewed before the patient is scheduled for elective, non-emergent services.

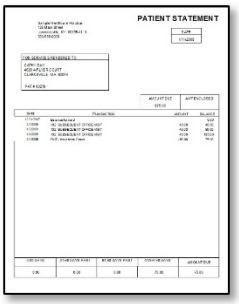
2. **DO NOT ACCEPT ASSIGNMENT OF PAYMENT FROM THESE PATIENTS.** 
After a patient with a no-contract plan has been identified, explain to the patient that your hospital does not participate with the patient's plan; therefore, if the patient wishes to receive services, they will be financially responsible for those services and should execute a legally binding wavier provided by the hospital. The hospital can submit a claim on behalf of the patient as a courtesy; however, the patient is responsible for payment – not the patient's plan. Moreover, the patient should not sign the hospital's assignment of payment/benefits form. Because some plans are instructing members to state they are "uninsured" or "self-pay" in order to obtain additional discounts, the hospital may want to consider establishing discount policies for these patients separate from existing self-pay or uninsured discounts.

3. **NOTIFY THE NO-CONTRACT PLAN.** Immediately send the TPA (and the employer if it is an employer-sponsored plan) a form letter (with a copy of the patient's signed waiver from step #2 above) providing notice that the hospital does not agree with the terms outlined on the member ID card, the patient has accepted financial responsibility, the hospital will balance bill the patient for charges not paid by the plan, and that any attempt on the plan's part to prevent this billing will be considered a "tortious interference" with the business relationship between the hospital and the patient. Close by noting the hospital is willing to discuss a potential direct contract with the plan and indicate the appropriate hospital representative to contact.



4. **DO NOT ACCEPT ADVERSE LANGUAGE ON EOBs OR CHECKS.** The no-contract plan may attempt to establish an "accord and satisfaction" (a binding payment-in-full status) through language on the check or EOB. To avoid this, cash posting staff can be instructed to flag checks with this language and EOBs that are not associated with usual sources of remittance for further review. <u>These remittances should be returned</u>. When adverse language is identified, a notice rejecting the language with a copy of the original form letter previously used in step #3 above can be sent to the plan.

5. **FOLLOW YOUR NORMAL BALANCE BILLING POLICY.** Respond to no-contract plans' legal tactics by reminding them of the hospital's prior communications. Encourage the patient, the plan, and (where applicable) the patient's self-funded employer to grapple with the fact that a contract with the hospital does not exist; therefore, the plan does not have the right to unilaterally determine what the hospital will be paid. Move towards a reasonable settlement, continuing to encourage the plan to enter into a contract with the hospital to avoid further problems.




6. **BE CONSISTENT.** Identifying and addressing these scenarios on a consistent basis is key to defend against the legal actions of no-contract plans.


7. **EDUCATE.** Many employers, understandably trying to reduce their employee benefits spend, do not understand the realities of no-contract plans until their employees are caught in the middle. A proactive and transparent dialog with community business leaders can help raise awareness and avoid headaches for employers, their employees, and the community hospital they rely upon.

8. **DIRECT CONTRACTING.** For employer-sponsored plans, contract directly with the employer versus the TPA in order to prevent other employer groups from accessing your negotiated rates. If that is not possible, consider making the contract with the TPA specific to the employer in question.