EPSTEIN BECKER GREEN

Important Risk Contracting Terms

Key Term	Options/Considerations
Assigned Risk Cohort	What is the enrollee inclusion criteria for risk arrangement? Common options include (can include multiple overlapping): • Range of expenditure by % among overall membership (e.g. top 25% of expenditure) • Enrollees with target diagnoses (e.g. diabetes) • Social determinants of health (e.g. homeless enrollees) • Provider relationship (e.g. current PCP patients or SNF residents) Often includes minimum and maximums and negotiated population growth over time to allow growth in risk exposure, manage staffing, etc. Should be based on modeling.
Exclusions – Member/Cost	Cohort definition can be layered with negotiated individual exclusions to preemptively manage risk and ensure clinical model is prepared to handle cohort membership. Cost exclusions are unusual and tend to be addressed in individual stop-loss.
Attribution Methodology and Process	Prospective or claims-based attribution. • Prospective for models without prior patient relationship • Claims based for providers with prior relationship Refresh of attribution list on a negotiated schedule. Significant data and work-load implications of refresh schedule depending on cohort criteria. Potential option for stacked attribution model as an alternative: • Larger attribution list eligible for services • Only “engaged” patients subject to value-based risk
Shared Savings/Risk vs. Capitation	Shared savings/risk includes more limited profit potential but lower risk of loss and fewer regulatory implications. Possible to deploy transitional process from shared risk toward capitation over time based on meeting target milestones.
Quality	All value-based arrangements should have a quality component as a strategic matter and many regulations require them. Optionality as to whether upside risk payment is contingent upon meeting metrics or that quality performance is tied to a separate bonus pool. Targets, benchmarks, adjustments, and technical specifications are key subjects of negotiation and drafting.

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Risk Corridors and/or Stop-Loss	Many value-based arrangements with significant downside risk include negotiated risk corridors that cap both upside profit and downside risk associated with performance. Often negotiated to decrease in protection over time during term of agreement. Stop-loss is only down-side risk and can be aggregate or individual attachment points. MA and Medicaid MCOs are required to ensure arrangements comply with PIP regs on stop-loss.
Data sharing – Up Front/Ongoing	Data exchange during NDA/LOI phase crucial to inform effective negotiations on material terms. Often see exchange of 3+ years historical claims data at minimum. Ongoing data following launch crucial for effective care management.
Risk on Outpatient Medication Costs	Wide variation in market treatment of outpatient Rx and tends to depend on pre-existing PBM arrangements. Important to ensure clarity in terms.
Risk Adjustment	Crucial aspect of risk arrangements with risk-adjusted benchmarks. Providers assuming risk-adjusted arrangements in government programs carry significant regulatory obligations. Specific terms as to incorporation of risk-adjustment data at settlement need careful drafting in agreements.
Baseline	Typically based upon 12 months immediately prior to the contract (or sometimes performance period) • Typically the specific cohort (prospective list) for members who were eligible for XX months • Typically based upon spend / member months to get an average PMPM TCOC for the cohort • Some lags in claims data to set Baseline / Benchmark
Trend	Actuarially derived but key details negotiated and drafting again important. Inflation and other factors.
Benchmark	Typically mathematical calculation of Baseline X Trend, on a PMPM basis. Similar methodology used for shared savings and capitated arrangements.
Program Governance	Recommend that an executive level strategic oversight committee on all large risk deals. Will help ensure success, sustainability, and expansion of program and avoid costly disputes at settlement.
Revenue recognition	Many organizations assuming risk seek right to recognized revenue equal to benchmark PMPM. This requires careful coordination with accountants/auditors and specific language on collectability and principal responsibility.

Key Term	Options/Considerations
Term	Term should be long enough to justify administrative load for payor and allow time for realization of reduction in MLR.
Termination	For risk arrangements, post-termination settlement provisions extremely important as are all terms related to early termination.
Assignment	For newer entities and risk-based MSOs, can become material issue for valuation.
Government Policy Changes	For government programs, especially Medicaid managed care, government can make dramatic and unexpected changes to payor revenue. Important to anticipate how this will be handled in the contract.
Dispute resolution	Recommend using actuarial dispute resolution system for settlement disputes. Arbitrators less likely to have experience necessary to handle disputes over benchmark or trend methodology, risk adjustment, MLR, or stop-loss. Actuaries are more equipped and can handle more accurately and more efficiently.