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ASSOCIATION OF
Preferred
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Organizations

AAPPO Silent PPO White Paper



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Introduction

There has been much debate and misinformation recently about both the definition and perceived prevalence of “Silent PPOs.” Essentially, a so-called Silent preferred provider organization (PPO) is an entity that takes or sells access to a physician or health care provider discount without the contractual right to do so or without disclosing when a network contract is applied to a claim. A key fact that is often lost in the discussion is that not all preferred provider networks (PPNs) are Silent PPOs. In fact, just a few aberrant organizations (which may have hijacked the PPO or PPN label) are the source of Silent PPO activity.

The American Association of Preferred Provider Organizations (AAPPO) has developed this white paper to provide clarity on the role of PPOs within the health care system, and to better define what constitutes a Silent PPO.

Preferred Provider Organization Overview

A PPO is a health care delivery system in which providers contract with a PPN at various reimbursement levels in return for consideration, which may include direction of patients into their practices, timely payment and/or other benefits. PPOs differ from other health care delivery systems in the way they are financed. They typically provide enhanced choice, benefit flexibility and enrollee access to quality, cost-effective medical care delivered by both in- and out-of-network providers.

There are two types of PPOs:

The primary focus of a *non-risk PPO* is to contract with providers in a geographical area to form an interconnected network of providers and services. The non-risk PPO network leases and/or “rents” its network for a fee to insurance companies, self-insured employers, union trusts, third-party administrators, business coalitions and associations.

A *risk PPO* (or insured PPO) has a similar structure, but unlike a non-risk PPO, it assumes the financial risk for an enrollee’s medical costs. Traditionally, insurance companies offer risk PPOs that include a benefit plan and network services, either provided by the risk PPO or leased from a non-risk PPO network.

Both risk and non-risk PPOs may be involved in rental network arrangements. As discussed below, a legitimate rental network is *not* a Silent PPO.

The Value of PPOs in the Health Care System

More than 193 million Americans – two-thirds of all insured Americans – are enrolled in a PPO, making PPOs the most popular health care option for consumers. Unequaled flexibility, choice and access – the hallmarks of PPOs – make PPOs such an attractive option for consumers.

Consumers are increasingly demanding the ability to take a more active role in their health care management and decisions. PPOs are meeting that demand by allowing consumers to select their provider of choice when accessing medical services they need when they need them, and by providing benefit coverage (typically at a lower level) when consumers select a provider outside the PPO network.

Providers, too, often prefer PPO arrangements. Through the co-pay mechanism, the PPO model can provide direction of patients and increased billable encounters per family unit for PPO providers. In addition, when developing contracts with providers, PPOs separate provider quality from provider reimbursement levels and aim to balance the delivery of

the most appropriate care with the most reasonable – though not necessarily the lowest – cost. This structure allows the PPO to avoid unnecessary intrusion into the doctor-patient relationship. The financial considerations of the PPO health care delivery model do not override physicians' patient care decisions, but rather draw upon providers' expertise to develop and implement appropriate cost control measures.

Finally, PPOs, and in particular rental networks, provide a cost-effective way for employers to provide affordable access to quality care for their employees, especially when the employer expands into other geographic regions. Rather than embark on the costly development of new networks of providers, the employer may choose to rent an existing PPO network. The employer avoids wasteful health care spending, employers and employees benefit from the strong “local flavor” of the network and the generally positive relationships between the providers and the existing network, and participating providers gain advantages as a result of their membership in PPOs, typically including new patients and increased retention of existing patients. It is truly a “win, win, win” situation.

Fundamentals – the Negotiation and Contract

At the heart of any PPO arrangement is the contract between the PPO and the provider who becomes part of the provider network. Generally, the contract reflects the negotiated agreement whereby the provider elects to become a participating provider and the PPO agrees to provide certain benefits, often including but not necessarily limited to prompt payment, direction of patients into and retention within the practice, marketing and promotion, and/or administrative services.

In building its network of providers, a PPO will negotiate a specific discount with a physician's office for certain services in return for direction and/or other benefits. The physician agrees to be reimbursed for services provided to a PPO member at a discounted rate that generally reflects the value that the physician believes the PPO brings to the table. The particular benefits to the practitioner may vary from PPO to PPO, yet the value to the consumer remains constant. The PPO-physician relationship allows consumers who see a participating provider to receive medical services at a lower cost and can increase the traffic to and retention of a PPO network physician.

In a legitimate network rental arrangement, the contract between the non-risk PPO and providers will clearly authorize the PPO to lease its network, including its negotiated discounts, to third parties. Contemporary contracts also typically direct the provider to a Web site or another mechanism by which the provider may obtain a list of the entities contracted with the PPO who are authorized to access the provider's services and negotiated rates. Transparency and fairness are imperative to the success of the provider-PPO relationship.

A note about bargaining power is warranted. While some contract terms tend to be standard in a PPO's contract template – i.e., certain definitions, dispute resolution procedures – many key material terms are negotiated by the PPO and the provider. To be sure, the degree of flexibility in contracting varies among PPOs, and in some cases state laws and/or regulations mandate the inclusion of certain terms. However, the notion that all proposed PPO contracts are one-sided, take-it-or-leave-it propositions, a common criticism leveled at PPOs and other managed care organizations, is simply not true in today's health care environment.

AAPPO's Core Business Principles for PPOs

Reflecting its commitment to promoting sound business practices and positive relationships between PPOs and providers, AAPPO has developed and urged its member organizations to adopt certain core principles. These core principles are intended to guide PPO industry leaders as they develop and implement business practices that are both operationally feasible and fundamentally fair to participating providers. AAPPO's core business principles include the following:

- **Clarity and transparency:** In a successful PPO, the relationship between a PPN and its participating providers is characterized by transparency concerning the fundamental business model of the PPO and the range and nature of anticipated transactions involving participating providers. Clarity and transparency in these arrangements provide the foundation for building solid working relationships among PPNs, payers and physicians. In addition, clarity and transparency provide PPNs, payers and physicians with the foundation for a common understanding of the types of PPNs available, as well as the contractual implications in participating provider agreements.
- **Accountability:** We believe that PPOs and rental networks are vital components of the health care delivery system, as they facilitate expanded access to quality, affordable health care. However, we also believe that, in a rental network or other arrangement in which third parties will enter into the provider-PPO relationship, the network with which a provider originally contracted must retain some accountability, particularly to maintain transparency regarding the transactions that occur as a result of interaction with third parties.
- **Collaboration with participating providers:** A PPO and its participating providers should be viewed not as adversaries on opposite sides of a contract, but rather, as parties that share a commitment to provide access to affordable, quality health care to members. Meaningful collaboration offers the best opportunity for PPOs and providers to address and ultimately resolve the complex and challenging issues facing the health care system.

AAPPO's member organizations strive to adhere to these principles in their daily operations. The principles have also driven some innovative and exciting activity at the national level. Some of these initiatives are discussed below.

The "Silent PPO" Debate

Unfortunately, some in the health care industry have taken advantage of the non-risk PPO arrangement, creating arrangements commonly referred to as Silent PPOs. AAPPO long ago voiced its strong opposition to Silent PPO activity, and in today's market, very few entities continue to engage in true Silent PPO activity. Nonetheless, the lingering concern about Silent PPOs among providers and some public officials has led to a backlash against *all* PPOs, as evidenced by the introduction of highly destructive, American Medical Association (AMA)-backed legislation in several states.

What Is a Silent PPO?

A Silent PPO is a business entity (which may masquerade as a PPO) that applies discounts to payments for provider services without a contractual right to do so, without having honored the obligations to the provider and without appropriate notice to the provider. In Silent PPOs, there is no contractual agreement authorizing application of the discount, and network identification is typically absent. In addition, the PPO whose discount is being accessed, as well as the provider, may be unaware of such access. This type of activity is harmful to both providers and legitimate PPOs.

AAPPO's Position on Silent PPOs

AAPPO supports the disclosure of contractual intents, purposes and commitments, the disclosure of the network contract applied to a claim, and mutually agreed-upon consideration in exchange for the provider contract discount, such as patient steerage, benefit differentials applicable to in- and out-of-network providers, other financial incentives or prompt payment of claims. AAPPO believes it is in the best interest of physicians, other health care providers and PPOs to pursue contractual relationships based on fair business practices and principles to ensure a mutually

satisfactory business association.

Providers' Misconceptions about Silent PPOs

Like AAPPO and its member organizations, most providers are opposed to Silent PPO arrangements. Understandably, providers often feel betrayed when they perceive that a network partner has led them into a Silent PPO arrangement. Where an undisclosed Silent PPO truly exists, that anger is justifiable. However, determining when a provider is truly involved in a Silent PPO arrangement is not as simple as it may seem. In our work with providers and provider organizations on Silent PPO issues, AAPPO has learned three things that are significant to any meaningful effort to address Silent PPO activity.

- Providers often do not understand the difference between a Silent PPO and a rental network; as a result, providers may attribute nearly every frustration they experience to Silent PPO activity, strengthening the appetite to “over-legislate.”
- In many cases, providers have actually agreed to the very conduct to which they later object, because they did not read or did not understand the contract they signed and/or did not know who or which questions to ask.
- The cottage industry of self-proclaimed “Silent PPO experts” offering assistance to providers can actually make things worse by perpetuating misinformation and creating unfounded and counterproductive animosity between PPOs and their participating providers.

The good news is that each of these items is being addressed through AAPPO’s advocacy, outreach and educational initiatives. Once the myths are dispelled and providers and PPO leaders begin speaking the same language, we can move forward together to address our challenges in a positive and productive way.

What Is AAPPO Doing to Address Silent PPOs and Strengthen Relationships?

AAPPO is actively involved in dispelling myths about PPOs and Silent PPOs, addressing the problems created by Silent PPO activity and other inappropriate conduct, and working to strengthen relationships among industry participants, including providers, payers and PPOs. Among our significant activities are the following:

- *Ongoing advocacy:* AAPPO is leading the way in advocating for the PPO industry and its providers and members. Our advocacy includes monitoring and understanding policymakers’ attitudes toward PPOs and educating them on the industry’s key issues and legislative concerns, as well as the value PPOs bring to our health care system. Building and sustaining relationships with policymakers, regulators and other trade organizations are also important aspects of our advocacy program.

Many of our recent advocacy efforts have involved our response to the AMA Model Act to Regulate the Secondary Market in Physician Discounts (Model Act). The AMA’s Model Act is to a great degree a product of increasing provider frustration about the way access to their negotiated rates and services was granted, and their perceived lack of control over the contract negotiation process. There is no doubt that the Model Act targeted some legitimate problems that deserved the attention of the PPO industry. However, the Model Act often missed the mark completely, or went well beyond the “fix” necessary to address a particular problem. If adopted as drafted, the Model Act would have put many PPOs out of business and resulted in increased health care costs and decreased access to care. Through our state- and national-level advocacy efforts and partnerships with other industry members, and our collaborative efforts with the AMA and state medical associations, we have avoided the enactment of this legislation as drafted in any of the many states in which it has been introduced.

- *Response to AMA Model Act/NCOIL:* Complementing its state legislative efforts, the AMA brought the Model Act to the National Council of Insurance Legislators (NCOIL) Health, Long Term Care and Health Retirement Issues Committee, seeking endorsement and adoption of the Model Act. After we presented testimony before the committee, the chair of the committee asked AAPPO to work with the AMA and other stakeholders in an attempt to reach a compromise on the Model Act. Over the course of many months, AAPPO worked with the AMA, the committee and a small industry coalition to negotiate an alternative to the AMA Model Act. The NCOIL Model Act was ultimately adopted by the committee in November 2008. The NCOIL Model Act reflects a compromise that is rapidly gaining acceptance in several states in which rental network legislation is being considered.
- *Industry alliances and partnerships:* AAPPO has reached out to industry leaders from a variety of business interests and with diverse perspectives in order to identify and build on common concerns and to improve the delivery of quality health care. While competition, consolidation and consumerism are trends that continue to be prominent in the PPO industry, the focus in the next several years needs to be on collaboration. In some cases, we have joined formally or informally with industry partners to respond to the AMA Model Act and other legislative and regulatory threats. Other alliances have been more business- and consumer-focused, intended to enhance the quality of educational and professional resources available to industry leaders, which will in turn enable industry leaders to develop innovative methods to improve the overall health care experience for consumers.
- *Collaboration with the AMA:* AAPPO's relationship with the AMA has not been limited to advocating opposing positions in connection with the AMA Model Act and state-level legislation. Indeed, over the last few years, AAPPO and the AMA have been engaged in truly unprecedented collaborative efforts to address a variety of issues related to reimbursement, network leasing, contracting principles and other issues. Through these collaborative efforts, we have begun to work together to erode the distrust and acrimony that at times has existed between PPOs and providers, paving the way for more positive and productive relationships in the future.

The most notable product emerging from this collaborative effort to date is the AMA and AAPPO joint educational toolkit on contracting. The toolkit includes information on the following:

- The information that PPNs and payers should include in participating provider agreements and additional documents and communications that physicians need to support the contracting process.
- Understanding key differences between types of networks (i.e., primary and secondary) and the implications of each for PPNs, payers and physicians.
- The information that physicians should possess before executing a participating provider agreement with a PPN or payer.
- Definition of a Silent PPO.

Looking Ahead

AAPPO is proud of the work we have done to support the PPO industry and to improve relationships between PPNs, payers and providers. Yet much work remains to be done. We look forward to continuing to serve as the voice for the PPO industry, and to working to improve the health care experience for consumers.

If you have any questions or would like more information about PPOs, please contact AAPPO's president and CEO, Karen Greenrose, at 502-403-1122.