



2004 MANAGED CARE COMPLIANCE BRIEF

PART ONE:

**PROVIDER DISCOUNT ABUSE IN THE U.S.
HEALTHCARE MARKET**

HYGEIA

HEALTHCARE LEADERSHIP, ACCOUNTABILITY AND PROFIT



EXECUTIVE SUMMARY

During the past decade, Provider discounts via PPOs have become a fundamental component of most health insurance plans. In fact, PPO discounts are now factored into the design, administration, and pricing of insurance plans. Prevalent discount abuse practices, however, have been threatening this component as well as the integrity of business relationships between medical Providers, Payers, and buyers of healthcare services. Two of the most common forms of these abuses are Silent PPO use and PPO stacking.

A silent or secondary PPO arrangement occurs when a PPO sells their Provider discount rates to a Payer **after** the Payer's plan member or client use the medical services of the PPO's contracted Provider. This action constitutes managed care fraud because the Payer has been left out of the preferred agreement and no incentives have been provided for their plan members or clients to choose the Provider. A silent PPO also refers to the practice of contracting with a PPO to access discounts, but failing to alert the provider at the time of service that the PPO contract exists and should be applied. Often, the failure to alert the provider stems from the fact that the PPO logo identification has been "left off" the insured's ID card.

PPO stacking or "cherry-picking" is a related practice in which a Payer "shops" a claim from a particular Provider to multiple PPOs looking for the contractual arrangement that offers the lowest reimbursement rate.

Explicit contracts between PPOs, Providers and Payers require each party to fulfill specific obligations in their business relationship. On one side of health service transactions, PPOs contract with medical Providers to provide healthcare services at discounted rates in exchange for patient volume, prompt payment of claims and other terms. On the other side of transactions, PPOs contract with healthcare Payers (as described above) whose customers or insured members are actively encouraged, and often required by contract, to use the PPO network. Forms of encouragement include directing patients to providers in the network, offering financial incentives, and applying penalties for use of out-of-network providers.

Provider discount abuse occurs when a Payer intentionally or unintentionally breaches the contracts they pay a PPO to access. Whether intentionally or unintentionally, many Payers invalidate both their contracts with a PPO, and their right to access valuable Provider discounts by their failure to fulfill their obligations under the contract.

Healthcare Providers and U.S. courts have become aware and less tolerant of these unauthorized and undisclosed practices, as well as other cases of managed care contract abuse. Many providers are taking

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steps to void discounts that are being taken inappropriately. Insurance refusal, dramatic discount reduction or denial, PPO contract terminations and litigation are growing industry trends.

U.S. courts and state legislatures are hearing cases brought against insurance companies, TPAs, HMOs, and other Payers who are improperly taking discounts from Providers. The most notable legal decision in favor of a medical Provider is HCA Health Services of Georgia, Inc. v. Employers Health Insurance Company, where a federal court disallowed a silent or secondary PPO arrangement of a Humana subsidiary. After cracking down on the "silent PPO" industry in the state in 1999, the California legislature's Business & Professional Senate Bills (SB) 559 and 1732 effective July 1, 2000, placed disclosure and other requirements on entities engaging in the "silent PPO" practice, essentially stopping "silent PPOs" from marketing and selling lists of provider panels that offer discounted rates.

Furthermore, The American Medical Association (AMA) has also been successful in banning silent PPOs from Federal Employee Benefit health Plan contracts, and continues to look for other possible legal challenges.

As a result of the aggressive pursuit of discount abuse offenders in the healthcare market, growing numbers of healthcare law, recovery management and managed care auditing firms are now specializing in helping Providers identify and recover monies lost to managed care contract abuse.

Permanently losing access to discounts, dramatic discount reduction and litigation are risks Payers should evaluate carefully before engaging in these practices.

At Hygeia, we have a long-standing reputation for encouraging Payer-clients to comply with managed care contracts, and support efforts to prevent PPO stacking and silent PPO use. We educate clients about the impact of non-compliance on their access to strong discounts and long-term financial success. This has strengthened our relationships with Providers who recognize and reward our commitment with their most competitive rates. Our compliance protocol clearly demonstrates the financial benefits of avoiding silent PPO and PPO stacking arrangements.