Tactics for thwarting silent PPO activity - Managed Care - a discussion of silent PPO payer arrangements for the health care industry

Healthcare Financial Management, July, 2003 by Steve Messinger, Terri Welter

Hospitals and medical groups signing contracts with a large PPO in Indiana did not realize that the PPO had arrangements with well over 100 payers to access the PPO's network of providers. Furthermore, the providers did not realize that their contracts allowed the PPO to wash its hands of any problem a provider had with one of the "silent" payers. One large medical group discovered that many of the silent payers in this PPO paid as little as 50 percent or less of the contracted fee schedule.

What Are Silent PPOs?

Silent PPOs are payer arrangements that offer patients discounted provider fees without providing incentives for patients to access the providers' services. Under a silent PPO arrangement, a third party (which is usually not offering a PPO plan or policy) obtains a database of preferred provider rates from a managed care organization or a discount insurance broker. The managed care organization typically sells or rents its PPO provider network to the third party or insurance broker.

Consider the following example of how this arrangement works. Memorial Hospital signs a contract with a PPO and becomes one of the PPO's participating providers. Under the hospital's contract, the hospital will be paid according to the PPO's fee schedule (which represents a discount of, for example, 35 percent below the hospital's usual charges).

A patient who is not a member of the PPO obtains treatment from Memorial Hospital. After treating the patient, Memorial Hospital sends the patient's insurer an invoice for its reasonable and customary charges for the patient's care. After receiving the invoice, the patient's insurer seeks to determine whether Memorial Hospital is a member of the PPO network. In some instances, the insurer might contact a third-party insurance broker to make this determination.

The insurer then remits the discounted fee negotiated by the PPO to Memorial Hospital with an explanation of benefits (EOB) that refers to the PPO-contracted rate as the basis for payment. Memorial Hospital's payment posting staff confirms the contract with the PPO, and makes the discount adjustment. Memorial Hospital thereby receives a lower payment for care for this particular patient than it expected.

In most cases of silent PPO activity, the provider is led to believe that the discount is a legitimate contractual discount. With the large number of contractual arrangements that providers have in place with health plans and the numerous products and payers included within each contract, healthcare financial managers may be confused about which discounts are justified and which are not.

The American Medical Association believes silent PPO activity may be fraudulent. It has been estimate that providers nationwide have lost between $750 million and $3 billion dollars annually since silent PPOs became common in the early 1990s.
Providers often cannot resolve problems with silent PPOs, because the activity of applying unjustified discounts takes place behind the scenes without arousing the provider’s suspicions. In addition, the definition of “payer” in a typical managed care contract can create confusion, because it seemingly allows the party responsible for payment to be practically anyone. For example, often the definition specifies the payer as an employer, insurer, HMO, PPO, labor union, organization, or other person or entity. Although this definition is a difficult one for providers to amend in the contract, they may be successful at negotiating language obligating the health plan to require all of its payer entities to abide by the provisions of the provider’s contract with the health plan.

Healthcare providers can identify when they have fallen victim to silent PPO activity and take steps to root it out on both a proactive and a retroactive basis.

Identifying Silent PPOs

Due to the complexity of payer-provider relationships, identifying silent PPO activity may seem overwhelming. However, providers can learn to recognize the activity by employing a few effective tactics.

First, providers should perform a periodic audit (monthly or quarterly) of a sample of the organization’s EOBs to expose claims payment practices by individual plans and their contracted payers.

A successful audit requires the provider to have in place the following operational features:

* A book containing samples of patient insurance cards, updated regularly, at each registration desk
* A requirement that staff always make a copy of the patient’s identification card
* A requirement that the PPO’s name or identification number be listed on the patient’s identification card

If these features are in place, the provider can audit a sample of the PPO EOBs, matching the PPO’s name or identification number listed on the patient’s identification card with the name or number on the EOB. The payer identified on the EOB should appear on the list of payers belonging to the PPO. If a mismatch is identified, the provider should focus on that plan and payer to determine the extent of the problem. By gathering facts pertaining to the underpayment, the provider can identify the magnitude of the problem and accumulate evidence that can be useful when presenting the problem to the plan.

First, the financial impact on the organization of receiving the discounted payment should be calculated from the sample of EOBs having nonmatching plan names or numbers. Next, the financial impact to the entire body of claims should be extrapolated for that particular PPO plan for a defined time period (for example, since the contract effective date or annually). The resulting number is an indication of the size of the problem.

After defining the magnitude of the underpayments resulting from silent PPO discounts, the provider may be able to negotiate a settlement with the payer and PPO. If direct negotiations fail to produce results, the next step may be to refer the problem to the state’s insurance department (since silent PPO activity may be a form of insurance fraud). Insurance department investigation and action can deter future abuses, but they are unlikely to help providers recover payments.

If the magnitude of the problem is minimal, fixing the problem may not be worth spending the time and resources required. However, if the financial impact is significant, then potential solutions should be considered, such as terminating the original PPO.
contract altogether or going through the dispute-resolution channels defined in the contract as a means for obtaining third-party assistance in resolving the problem.

Protections against Silent PPOs

A healthcare provider can most effectively protect itself against silent PPO activity by taking steps at the negotiating table to include specific language in the contract with the PPO. During negotiations, the provider should take the following actions: (b)

* Clearly articulate the premise of the contract: that the provider is offering discounts in exchange for steerage of patient volume
* Require different coverage for in-network and out-of-network providers
* Require that the PPO’s name be included on all member identification cards and that the card be presented at the time of service
* Require identification of a payer’s use of the PPO network on the EOB
* Attach a complete payer list to the contract and require the plan to provide notice of changes to the list
* Review every definition in the contract carefully to ensure that they reflect the provider’s intent of giving discounts only to payers who have PPO plans or policies
* Define “payer” clearly to identify the entity obligated to pay, and include a statement that the hospital has a right to take legal action against that entity
* Negotiate a provision in the contract requiring the forfeiture of all discounts that do not comply with the PPO agreement
* Stipulate that the PPO must require all payers to abide by the terms of the PPO agreement
* Include a contract clause that allows the provider to audit the PPO’s records related to patient activity
* Include language restricting the plan, and any claims-paying organization with which the plan is affiliated by ownership or contract, from leasing or selling the payment rates established under the agreement
* State in the contract that all discounts are confidential and proprietary

A Statement of Fact

Taking an audit approach to resolving payer problems has proven to be financially favorable for many providers across the country. Managed care plans are much more willing to resolve payment disputes when providers come armed with the facts supporting their allegations of underpayment or contract breach.
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If a provider can identify and prove that silent PPO activity is taking place and can calculate the financial impact that it has on the organization, it may have a case for billing the underpaid amount back to the PPO and collecting interest on the late payments. The more specifically the contract language addresses this issue, the more "teeth" the provider will have when going to payers to recover funds retroactively.

Finally, by developing a reputation for vigilance against silent PPOs, providers may discourage silent PPO activity in their contracts with payers. Many providers have found that their efforts to identify and root out silent PPO activity have helped payers to become more aware of when a discount is unjustified, and sometimes payers may decide to cease the activity altogether.


(b.) These actions are roughly based on a set of "nine important terms to include in your PPO contract" listed in "The Silent PPOs Provider's Guide," Phillips & Garcia, LLP, North Dartmouth, Mass., 2000 (www.phillipsgarcia.com/silentprovdl.html).

RELATED ARTICLE: ISSUES AND ACTIONS

Silent payers can be difficult to detect, and their payment practices can drastically affect a hospital's bottom line.

* An audit approach to payment problems can uncover silent PPO activity.

* Information from the audit can be used to negotiate a settlement for the unpaid amount.

* Contracts with payers should include specific language that protects against silent PPO activity.

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