

III: Rental networks

I. Prior to signing a managed care agreement, what issues should a you consider regarding whether third parties will be able to access your discounted rates?

- Does the agreement state explicitly that the health insurer may lease or sell your discounts to other payers or networks?
- Does the contract implicitly grant other payers or entities access to your discounted rates, e.g., through broad definitions of terms like “payer” or “affiliate?”
- If access is granted, is the other payor or affiliate obligated to comply with the terms of the agreement?
- Will you be told beforehand which other payers or networks will have access to your services and discounts? If so, can you refuse to allow that access without having your agreement terminated?

II. Identifying when a managed care agreement may permit the health insurer to grant third parties access to your services and discounts

Managed care agreements frequently give the health insurer the authority to grant other payers or networks access to the negotiated payment discounts you have given to the insurer. This authority may result in your becoming involved in so-called “rental network” arrangements, which create a secondary market in which your discounts are traded. The authority may be explicit or implicit, and third parties gaining access to your discounts may include non-payers like repricers as well as payers.

A. Explicit access

In some states, a managed care agreement must state explicitly that the health insurer has the authority to grant third parties access to your services and discounts.

B. Implied access

1. Access to “payers.”

Frequently, a managed care agreement will not explicitly state that the insurer may grant third parties access. Instead, the health insurer’s intention to sell or lease your services and discounted rates is often signaled by the agreement’s use of broadly defined terms like “payer” and/or “affiliate.” The following is a sample definition of “payer:”

“Payer:” an employer, trust fund, insurance carrier, health care service plan, trust, nonprofit hospital service plan, a governmental unit, and any other entity which has an obligation to provide medical



III: Rental networks

services or benefits for such services to subscribers.

Broad definitions like the one for “payer” above are then used in provisions that implicitly grant third-party access. For example, the managed care agreement may include the following provision:

“Payment of claims. Payers will pay medical practice for rendering covered services to subscribers.”

This provision, in combination with a broad definition of “payer,” could allow a wide range of unidentified third payers, e.g., workers’ compensation program administrators, automobile or homeowner’s insurers, to exploit your discounts.

2. Rental to nonpayers

Sometimes a managed care agreement will authorize a health insurer to rent the practice’s discounted rate to nonpayers as well as payers. Access by nonpayers can also be achieved through definitions. The following is an example:

“Payer” means an employer, trust fund, insurance carrier, health care service plan, trust, nonprofit hospital service plan, a governmental unit, and any other entity which has an obligation to provide medical services or benefits for such services to subscribers, **or any other entity that has contracted with health insurer to access health insurer’s provider network.**

Nonpayers to whom a health insurer may grant access include so-called “repricers,” “network brokers” or “rental network Preferred Provider Organizations (PPOs)” (collectively referred to as “rental network PPOs”). These entities do not sponsor health insurance coverage. Nor do they administer health benefit plans. Instead, they collect information about the negotiated discounts to which you have agreed. Rental network PPOs then sell that discount information to health insurers or other payers with whom you may not have a direct contractual relationship. When you submit a claim for payment, the rental network PPO, on behalf of the health insurer, “reprices” the claim, i.e., the rental network PPO reduces the claim payment by the deepest contractual discount to which you have agreed and to which the rental network PPO has access. You may not realize that a nonpayer has applied your negotiated discounts to claims payments until you receive an explanation of benefits or remittance advice listing unrecognized entities and payment rates representing the lowest discounts that you have agreed to accept.

III. State responses and AMA model legislation

The AMA Advocacy Resource Center (ARC) has developed model legislation, entitled “*An Act Concerning Regulation of the Secondary Market in Physician Discounts*,” addressing physicians’ concerns with rental



III: Rental networks

network arrangements. A significant number of states have enacted laws based on this model legislation. The ARC was also primarily responsible for the National Conference of Insurance Legislators adopting model rental network legislation.

Because of this state legislative activity, rental network language in a contract offered to you, or specific types of rental network activity, may be unlawful in your state. For more information, see the laws organized in the Managed Care Contract Legal Database under the category "Rental Networks." You can also access the ARC model bill in the database under the general category "ARC Advocacy Resources," under the category "Rental Networks."