

TESTIMONY IN SUPPORT OF HOUSE BILL 1141

My name is Charlie Artz. I have been practicing health care law for 27 years. In addition to representing the Pennsylvania Orthopaedic Society (“POS”), I represent orthopedic surgeons, large medical groups and other health care providers. My testimony will focus on two aspects of HB1141: the provider network clauses; and the workers’ compensation fee petition procedures.

BONA FIDE WC NETWORK CONTRACTS – STOPPING THE SILENT PPO PROBLEM

The first issue to be addressed by HB1141 is the problem of “Silent PPO discounts.”

Silent PPOs are arrangements under which a workers’ compensation insurance company, third party administrator or self-insured employer (for ease of reference “WC Payors”) contracts with another company to gain access to discounts. These companies state that they have contracted with a “provider network”, but are not registered with the Pennsylvania Insurance Department as a Preferred Provider Organization (“PPO”). These unregistered and unlicensed “PPOs” make deals with WC Payors for undisclosed fees, then approach providers with contracts suggesting in many cases that the provider will never gain access to workers’ comp patients or panels unless they sign the agreement, which imposes a steep discount below the fee schedule rates established by the Workers’ Compensation Act.

POS has no concern with any organization that enters into a legally binding contract with a provider for a discount below the workers’ comp reimbursement rates **as long as the WC Payors are disclosed in the contract and any new Payors to which discounts apply are disclosed in writing through a negotiated amendment with the provider.**

The major problem providers are facing arises when the “PPO” imposes discounts on the provider for WC Payors’ claims (and even commercial payors) about which the provider is unaware. Providers receive significant reimbursement reductions from WC Payors (and commercial payors) where they may have existing contracts, or obtained the workers’ comp patient through their own efforts. The provider, in this case, has not bargained for the discount.

The “Silent PPO” typically does none of the traditional PPO network management services performed by legitimate, licensed PPOs. Silent PPOs generate millions of dollars in revenue making deals with WC Payors with whom they exchange the name and identification number of health care providers for money, provide nothing of substance to the provider, leverage the providers by threatening them to take these contracts without disclosing the payors to which the discounts are subjected, and do nothing but steer patients in exchange for cash.

One federal court decision described it like this:

A Silent PPO is a term of art for a kind of PPO abuse. Essentially, a Silent PPO occurs when a payor receives a PPO discount to which it is not entitled. In a Silent PPO, after the patient pays his share of the bill and the provider submits the outstanding balance to the payor for payment, the payor notices that the provider is a member of a PPO. The payor then proceeds to pay the provider at the PPO discounted

rate, instead of the usual and customary rate. This discount may constitute a breach of contract.

Roche v. Travelers, 2008 WL 2875250 (S.D. Ill. 2008). The most recent Silent PPO federal court decision stated the facts as follows:

Holland alleges that Private Healthcare Systems (“PHCS”) and Multiplan entered into a Network Access Agreement with a “network broker and a repricer”, Coventry Health Care Workers’ Compensation. This Access Agreement allegedly gave Coventry’s clients access to discounts from Holland’s physical therapy practice. **Holland asserts that PHS and Multiplan should not have given Coventry and its clients access to Holland’s discounted rates. Holland also claims that Coventry improperly rented access to Holland’s discount rate to numerous insurance payors, PPO administrators, network brokers and repricers. Holland asserts that this “Silent PPO scheme” orchestrated by PHCS and Multiplan drastically reduced Holland’s revenue and that no additional patients were directed to Holland’s practice in exchange for these discounts.**

Multiplan/PHCS v. Holland, 2016 WL 3983669 (S.D. Miss. 2016)(emphasis added). Although the federal court dismissed the provider’s racketeering claims against the Silent PPO organizations, it allowed its claims for breach of contract, civil conspiracy and disgorgement to go forward.

To demonstrate how much money is being generated through Silent PPOs, the two largest nationwide Silent PPOs, One Call Care Management and Align Networks, were purchased by Apax Partners, one of the world’s leading private equity investment groups, for over \$3.2 Billion, as reported in public documents. They were described as the leading provider of specialized cost containment services to the worker’s compensation industry. The public documents state that One Call and Align merged to strengthen the value proposition to workers’ compensation customers. My clients are regularly confronted with contracts from these organizations with the threat of “take it or leave it” in terms of discounts, refusal to disclose the payors to which the discounts might be subjected, and threats of being cut off from accessing workers’ compensation patients if they do not sign the contracts.

I have represented numerous clients attempting to challenge the unknown and unjustified discounts imposed by Silent PPOs. In one case, a large medical group signed a contract thinking it would gain access to additional patients. They thought taking a discount to increase some of their market share would be reasonable. Unfortunately, the Silent PPO had side deals with many other WC Payors and commercial payors. The practice noticed discounts being imposed on claims for patient services covered by payor contracts that had much higher rates, or for WC claims that they had already accessed through their own efforts in getting on employer lists and panels. We demanded the discounts cease. The Silent PPO refused to honor the request. We sent notification that the contracts were terminated. The Silent PPO refused to honor the termination for the entire group, even though the group contracted with the Silent PPO. The Silent PPO demanded all 120 physicians in the group sign termination notice letters. After months of hassle, and repeated litigation threats, the discounts stopped and the contracts were terminated, many months after the

termination should have taken effect. The client lost thousands of dollars in reimbursements. The manpower inside the practice to prove all of the wrongfully denied claims would have been overwhelming, and legal fees would have been significant. The provider cut its losses and didn't sue.

In another case I handled on behalf of a large orthopedic practice, the practice began receiving discounts on reimbursement for office visits, surgical procedures, x-rays, MRIs and medical equipment on workers' comp claims and commercial claims where the provider was already on the employer's list and had existing, negotiated rates with commercial payors. After several months of gathering evidence from inside the practice to prove the improper claim denials, and litigation threats, the discounts ceased, but the Silent PPO would not pay the proper amounts. Again, the orthopedic practice in this case evaluated the amount of time and internal effort it would take to gather enough evidence and litigate the claims, and decided to cut its losses and not litigate. Meanwhile, the Silent PPO generated significant revenues for doing nothing other than selling my client's name and provider number to WC Payors.

The National Conference of Insurance Legislators has adopted a model law for states considering regulating network rentals and banning "Silent PPOs." To our knowledge, Texas, Florida, California, Oklahoma, Louisiana, North Carolina, Ohio and Connecticut have enacted legislation defining and regulating Silent PPOs.

The only existing procedure to challenge improperly taken discounts by a Silent PPO is through the workers' compensation fee review system. That takes significant effort, and some successes have been reported; however, it takes many months to litigate those cases and there are no deterrents in place because providers cannot get attorneys' fees in workers' compensation fee review cases.

POS proposes to resolve this problem in the workers' compensation context in HB1141 by doing the following:

1. Making it unlawful for a WC Payor to reimburse a provider in an amount less than the reimbursement allowances under the Workers' Compensation Act unless the provider has executed a legally binding Agreement directly and exclusively with the insurer or employer, or an agent of the insurer or employer, through a bona fide provider network arrangement.
2. This would allow legitimate networks and companies developing workers' comp networks that provide legitimate PPO services to exist and take negotiated discounts.
3. Legitimate networks must perform "case management" services, which is defined in HB1141 as a variety of case assessment, care coordination, evaluation and management services.
4. It would make any discount or reimbursement reduction imposed by a Silent PPO null and void, and subject the insurer or employer to sanctions including paying the proper amount under the fee schedule plus interest, costs and attorneys' fees. Under the legislation these cases could be challenged

through the existing system by filing a petition with a workers' compensation judge.

5. It would subject any organization that knowingly receives compensation or anything of value to refer, recommend, steer or direct an injured employee to a health care provider without performing bona fide case management and coordination of care services to felony criminal sanctions.
6. Making it unlawful for a person to solicit a provider to accept discounts or reimbursement below the workers' compensation fee schedule by the use of any threat or coercion in any verbal or written communications stating or implying the provider will suffer negative economic, patient access or reimbursement consequences if the provider does not agree to participate in any agreement or network at a discounted reimbursement rate.

From a public policy perspective, it is important to enact all of these remedies so there are sufficient deterrents in place to stop Silent PPOs from taking improper discounts on claims that were not negotiated with the provider.

WORKERS' COMPENSATION FEE PETITION PROCEDURES

Under the current Workers' Compensation Act, regulations and case law, providers may file a Fee Review Petition with the Bureau to challenge unpaid workers' compensation claims, or claims paid below the proper fee schedule amount. The provider may seek reimbursement and interest only.

The provider may not obtain attorneys' fees. Providers lack standing to file a review petition or penalty petition in front of a workers' compensation judge.

Workers' compensation insurance companies, re-pricing companies and other agents of the WC Payors often use a variety of tactics to reduce the proper amount of payment to providers. In many cases, they combine billing codes and "bundle" reimbursement, deny claims, or fail to implement the updated fee schedule in a timely manner. This forces providers to litigate claims. Their only remedy is to get paid with some interest.

In a recent case, a longstanding orthopedic practice client was significantly underpaid for medically necessary medical, surgical and therapeutic treatments to an injured worker. We litigated the claim through the fee review petition system. After nine months of dealing with the process, and without any leverage in terms of attorneys' fees or penalties that could be imposed on the insurance company, we resolved the matter successfully by receiving almost all of the payment due, but no attorneys' fees. The amount owed to the orthopedic practice was unequivocally established by a 2003 Commonwealth Court decision, and the insurer had no reasonable defense. On the eve of the trial, they agreed to pay, after my client had to expend significant amounts of time, effort, resources and fees.

HB1141 would remedy that problem by doing the following:

1. If a provider wins its application for fee review, the provider would be awarded the full amount of the unpaid claims, interest, costs and attorneys' fees.

2. Costs and attorneys' fees would be imposed if the insurer's position is determined to be unreasonable. The judge can also impose a penalty of up to 50% of the amount that should have been paid.
3. These remedies are consistent with the rights that claimants have in cases that are challenged before a workers' compensation judge.

Insurance companies have no incentive under current law to quickly resolve undisputed claims without the threat of any sanctions. HB1141 would provide a remedy to these types of cases.

Thank you for the opportunity to present this testimony.

Respectfully submitted,

Charles I. Artz, Esq.
Artz McCarrie Health Law
200 North 3rd Street
Suite 12-B
Harrisburg, PA 17101
Office: 717-238-9905
Fax: 717-238-2443
Email: cia@artzmccarrie.com