Know the Stakes Before Signing Any Solicitation

A psychologist recently contacted the American Psychological Association (APA) Practice Directorate's department of legal and regulatory affairs for help after she received a puzzling fax. The fax included what looked like a cover letter and an IRS W-9 form requesting the APA member's taxpayer identification number. The letter stated that "members/payers" of the provider network had reported using the psychologist's services.

The practitioner assumed that one of the managed care companies with which she contracts had subcontracted with this provider network to pay its claims. She figured that the subcontractor needed her taxpayer identification number to pay her directly for the claims she had submitted to the managed care company.

However, the document struck her as odd. For example, it noted payment terms that were inconsistent with her managed care company contract. And it made a reference to credentialing that presumably had no bearing on payment.

The psychologist approached Practice Directorate staff for guidance about whether to sign what she had received. Staff reviewed the document and concluded that it was a well-disguised solicitation to join a provider network. If the psychologist had signed this document, the financial consequences could have been substantial. To appreciate the potential consequences, it is important to understand the distinction between a managed care organization and a provider network company.

MCO Versus Provider Network

A managed care organization (MCO) typically is the entity that contracts with employers to provide health services to its employees. A provider network company is a business that contracts with health care practitioners to provide services at specific rates.

MCOs often have their own provider networks whereby the MCO contracts directly with providers to furnish services. Some MCOs subcontract with outside provider network companies to deliver services. Some MCOs do both.

A provider network company usually contracts with multiple MCOs. It can be difficult to track exactly which MCOs a provider network company is affiliated with. For example, the company may service an MCO in one state, but that MCO may use its own provider network in another state.

It can be difficult to track exactly which MCOs a provider network company is affiliated with. For example, the company may service an MCO in one state, but that MCO may use its own provider network in another state.

Making the distinction between an MCO and a provider network company is critical. If you have a contract with an MCO, you are obligated to provide services to enrollees of that managed care plan at whatever rates and terms your contract dictates. On the other hand, if you contract with a provider network company, you may not know which MCO enrollees you will have to treat. The provider network company might have contracts with several MCOs in your area, and the list can change over time. Although you may not have a contract with a client’s MCO, that organization may be using a provider network in which you agreed to participate.

Why does this distinction matter? Because if you are part of a provider network company, it may not be clear to you: whether you are obligated to accept in-network rates for a particular client; whether you are entitled to be paid out-of-network rates (which are usually higher than in-network rates) or whether you can get paid directly by the client for your services. You may know that you do not have a contract with your client’s MCO and then assume that you do not have to accept in-network rates. If, however, you have a contract with the provider network company that contracts with your client’s MCO, you may be obligated to
accept the provider network company’s in-network rates for that client even though you do not have a contract with the client’s MCO.

Though a client’s insurance card will usually list both the MCO and the provider network company somewhere on the front or back of the card, some psychologists do not check the client’s card. Instead, they ask which insurance the client has and if they do not have a contract with that MCO the psychologists may incorrectly assume they are not obligated to accept in-network rates.

The Financial Stakes

Returning to the example at the beginning of this article, if the psychologist had signed the agreement she received by fax, she could get paid less for her services to clients. This situation would result if some of the practitioner’s clients who were either paying her directly or had an insurer making out-of-network payments on behalf of the clients turned out to be covered by a managed care company that contracted with the provider network company with which she just signed on. In that case, the psychologist would have to accept the company’s reduced rates as payment in full. Similarly, she would have to accept the lower rate for any new clients enrolled in an insurance plan that used this provider network company. Also keep in mind another consequence of signing such an agreement: It can be difficult to have your name removed from a provider network. Legal and regulatory affairs staff in the Practice Directorate have heard many stories of providers needing to notify a provider network company repeatedly that they have terminated their contract and should be removed from the company’s listing of providers.

In short, psychologists must carefully evaluate the payment and other terms of any agreement they are thinking of signing. The following additional pointers may be helpful in considering a contract involving MCOs and/or provider network organizations:

Find out how local affiliations between MCOs and provider network organizations may affect your practice.

In considering a contract from a provider network company, you may want to request a list of the MCOs with which that company contracts. You may also want to check your current clients’ insurance coverage to see if their MCOs use this provider network company.

Keep in mind that unofficial-looking contracts are just as binding as contracts that appear official.

While most MCO contracts have “Participating Provider Agreement” or a similar phrase emblazoned across the top, they needn’t be so clearly identified to be legally binding. A valid contract may look like a regular letter.

continued on page 8

NOVA Information Systems/NOVA Network has changed its name to Elavon. Same great company backed by the same great people. It’s a new brand for a new global era.

Elavon, the APA Practice Organization’s payment processing affinity partner, invites you to take advantage of the discounted rates available to you as a member. Even if you are currently using another payment processor, call us for a free rate comparison. You have nothing to lose but those higher fees!

Elavon Offers:
✓ Processing solutions for all major credit & debit cards, corporate and purchasing cards
✓ Electronic Check Service and Gift Cards

To get started, call 800-546-1831.
Most contracts are properly identified and clearly lay out the terms you will be agreeing to by signing — with headings identifying different parts of the contract such as payment terms, credentialing requirements and confidentiality. Unfortunately, other contracts, such as the one in the example for this article, include all such terms in a few sentences of what appears to be a letter. In general, if a document discusses payment terms and is accompanied by an IRS W-9 form, then the document is a contract and you should carefully review its terms.

Don’t assume you can pick and choose among a contract’s terms.

Psychologists sometimes wonder if there is any leeway when they sign a contract to modify a provision that they find objectionable, for example, by striking through it and signing their initials. Companies typically expect health professionals to agree to a provider contract in its entirety without changing any of the terms.

If you don’t like a particular term, you can ask the MCO whether it is possible to modify or delete it. Don’t assume that doing so without the expressed, written approval of the MCO approval is acceptable.

Be aware of state governmental entities to which you can report an MCO’s activities.

If you believe an MCO or provider network company is making a deceptive solicitation or otherwise acting inappropriately, contact your state insurance commission or similar state agency responsible for overseeing managed care contracts. Whenever you send a complaint letter to the MCO or provider network company, provide a copy to the state insurance agency as well.

Finally, always remember that signing any contract has the force of law.

Whenever a psychologist signs a provider contract to deliver services to managed health plan subscribers, it creates obligations that have the force of law. Read every provider contract carefully and make sure you know what the terms mean — and that you are willing and able to meet them — before signing a contract.

Please contact the Practice Directorate’s legal and regulatory affairs staff at 202-336-5886 or praclegal@apa.org if you have any questions or concerns about your provider contracts with managed care companies. While we cannot provide legal advice to individual psychologists, we can tell you about legislation or legal actions related to your contract issue.

NOTE: Legal issues are complex and highly fact-specific and require legal expertise that cannot be provided by any single article. In addition, laws change over time and vary by jurisdiction. The information in this article should not be used as a substitute for obtaining personal legal advice and consultation prior to making decisions regarding individual circumstances.