

Dealing with Discount Networks

A step-by-step guide for psychologists

Consider the following hypothetical scenario: Several years ago, you signed a contract with the Looks Promising Network. You thought the network would be a good source for referrals, but it never contacted you or sent you a single patient.

Now you have a contract with a health insurer known as Big Insurer. It has been paying you a certain amount for a particular psychological service, but the payment rate recently dropped by a substantial percentage. You contact Big Insurer for an explanation of the decrease, and you are told that your rate has been discounted because you are on the provider list for Discount Network.

You have never heard of Discount Network.

You learn that Discount Network purchased the Looks Promising Network and acquired its contracts. Discount Network approached Big Insurer with a list of providers—including you—who are available at their discount rate. Big Insurer relied on your old contract with Looks Promising to lower your payment rate.

Now that Big Insurer is paying you less, what do you do? Review the following steps for addressing this predicament building on the hypothetical example.

1 **STEP 1—Determine if your provider contract with Big Insurer allows it to pay less than the contracted rate.**

Review the payment provisions in your provider contract with Big Insurer. See if there is any applicable language that allows Big Insurer to pay you less than the reimbursement rate in Big Insurer's contract. One example would be if Big Insurer's contract states that the insurer will pay you a rate indicated in the contract unless you have agreed to a lower rate with another network with which Big Insurer has a contractual relationship. If you do not see such a provision, ask your company representative what in the provider



contract allows the provider to discount the rate. If the representative fails to identify an applicable provision, you can argue that Big Insurer is breaching its provider contract with you by paying less than the agreed-upon rate.

2 **STEP 2—Verify the existence of the contract used to discount your rate.**

Your contract (called the “Original Contract”) with Looks Promising is another key document. Assuming that Big Insurer is able to discount your rate based on Step 1, Big Insurer must then rely on the Original Contract to argue that you have agreed to this lower rate. Thus, it is important to verify that the Original Contract in fact exists.

You may wonder which of the two contracts takes precedence. Your provider contract with Big Insurer takes precedence because it controls your relationship with Big Insurer, the company that is contractually obligated to reimburse you for seeing patients insured by Big Insurer. As noted above, Big Insurer's contract with you should indicate whether: you are entitled to the reimbursement rate stated in that contract; or if there is a provision allowing Big Insurer to pay you a lower rate, based on contracts you have signed with other networks. If Big Insurer's provider

contract does give it the right to pay a lower rate, then the Original Contract is arguably irrelevant.

If you do not recall signing a contract with Looks Promising or cannot find your copy of it, ask Discount Network to provide you with a copy of that contract. Also ask Discount Network to state in writing that it has purchased Looks Promising Network and/or the rights to its provider contracts.

If Discount Network does not provide you with a copy of your Original Contract, you can argue that it has failed to establish that you agreed to be part of the Discount Network. In addition, if you do not have a copy of your Original Contract you will be unable to answer the questions in Step 3 regarding the validity of this contract.

3 STEP 3—Review your Original Contract

Following are several key provisions to review in the Original Contract:

Reimbursement Rate. Does this contract state the reimbursement rate that is now being used as your discount rate? If not, does it allow the company (Looks Promising or its successor, Discount Network) to change the reimbursement rate without notifying you? Most regular provider contracts require that the company provide you with written notice a specified amount of time before changing the reimbursement rate. In most discount network situations, the psychologist has not heard *anything* from the discount network prior to discovering that his/her rate has been discounted. In that circumstance, the psychologist obviously would not have received the required notice of the rate being lowered.

Definition of the network. Does the contract state what network you signed up with? Does it give Looks Promising the right to rent or lease that network to other companies? If not, you can argue that the contract applies only to referrals from Looks Promising or its successor, and thus it doesn't allow for discounting your rate for referrals from Big Insurer.

Term and Termination. Look at this provision to see if there is an argument that the contract is no longer in effect and/or if you decide to terminate the contract (see Step 5).

Many provider contracts renew automatically each year if neither side terminates. Many contracts can be terminated by the psychologist with 90 days' written notice, but some have longer termination periods.

4 STEP 4—Make your arguments

Now that you have gathered your information in the first three steps, it is time to start your advocacy. You may want to start with a phone call if the company is responsive to telephone inquiries and you have a good relationship with a representative at Big Insurer. But be ready to escalate to concise, written communications (and beyond that) if the phone calls are not effective.

When communicating by e-mail or postal mail, write to both the main insurance company, Big Insurer, and the discount network company (Discount Network in this example) because both are responsible for discounting your rate.

Make the following arguments, if applicable:

- Big Insurer's provider contract does not allow it to pay you less than the rate provided in Big Insurer's contract.
- The Original Contract (with Looks Promising) is not valid if you never received any referrals under it. The argument is that Looks Promising's part of the bargain was that it would send you referrals. (Your part of the bargain was to provide services to the referred patient at the agreed-upon rate.) No reasonable person would accept a contract to join a network that provided no referrals, where the only effect was that years later his/her business from other sources would be discounted. Even if the Original Contract does not specifically state that Looks Promising will give you referrals, you would argue that this is implied from the nature of the contract or from its marketing materials.
- The Original Contract, even if valid, does not allow the



Dealing with Discount Networks *continued from page 8*



discounted rate—for example, the rate originally stated was higher and you never received the contractually required notice that the rate would be changed.

- The Original Contract applies only to patients referred to you under that contract (by Looks Promising or Discount Network); the contract does not state that it will apply if the network is made available to other companies.

STEP 5 (optional)—Give notice to terminate the Discount Contract

You may wish to terminate the Original Contract without conceding its validity. The point of not conceding the validity of the Original Contract is to keep either company from arguing that your request to terminate the Original Contract is a tacit admission that it exists and/or is valid. Termination is not recommended if you are receiving referrals directly from Discount Network and the value of those referrals is greater than the amount of money you are losing by having referrals from Big Insurer discounted.

The benefit of termination is that it should bring a clear end to the discount. Big Insurer and Discount Network may dispute your arguments about the validity of the discount or the Original Contract. They may make arguments about how the contract terms should be interpreted. But the companies have no legitimate argument for continuing to discount your rate after you have properly terminated the Original Contract.


Follow these steps if you decide to terminate the Original Contract:

- Give Discount Network written notice with the specified time period in the Original Contract. For example, you could use language like this:
 “This email/letter will serve as my 90-day notice of termination as specified in the contract. However, I do not concede that this is a valid contract for the reasons stated above.”
- If you do not have a copy of the Original Contract, say that you are terminating at the earliest possible date permissible under the contract.
- Send your termination notice by e-mail or certified mail so the company cannot delay termination by claiming it never received your notice.
- Send a copy of your termination notice to Big Insurer.

STEP 6—Getting Help

If you are having trouble deciphering the key terms in your contracts or resolving the dispute with the insurer and/or the discount network, contact the APA Practice office of legal and regulatory affairs at praclegal@apa.org or 202-336-5886.

You may also wish to retain a lawyer in your state who is knowledgeable about contract law, and ideally about provider or health care contracts. Such a lawyer would be able to cite cases from your state on the relevant contract law issues. A letter from a private lawyer is a signal to the company that you mean business and are prepared to take legal action if necessary.

Please note: Legal issues are complex and require expertise that cannot be provided by any single article. 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. 

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