

**Setting the Pace**



# **Session 1 – Legislative Implications for TPAs**

## Setting the Pace



## Speakers

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## Overview

- Between a Rock & a Hard Place
- Ernie & Bert (The PPO Contracts)
- The “New” Gap In Town
- Dilution of In-Network Incentives = Reduction of Value to Providers
- Overview of State Policy Changes affecting TPAs



## Between a Rock & a Hard Place

- TPA/Plan Cannot Simultaneously Honor the SPD & Stop-Loss Contract as well as the PPO Contract...
  - **PPO Contract**
    - Requires Payment Within 30 Days
    - Forbids Audits, or use of Audit Results (ie. U&C Pricing)
    - Requires Payment of Charges Amount Minus Discounts, No Questions Asked!
  - **The SPD**
    - Requires Claims Review & Audits (Payment Delays)
    - Stop Loss Insures the SPD as written and is not bound by the PPO Agreement



## Between a Rock & a Hard Place

- **Plan Pays per PPO**
  - Breach of Fiduciary Duty to Enforce the SPD
  - Stop Loss Will Not Reimburse
- **Plan Pays per SPD**
  - Violates PPO Contract
  - Plan or TPA may be sued by the provider (Baylor v. GPA) and lose
  - Patient will be Balance Billed
    - Contractual Prohibition of Balance Billing #1  
Reason To Use PPOs

## Ernie & Bert (the PPO contracts)

- Ernie
  - **Agreement Between PPO & TPA/Plan**
    - TPA signs as Payor even though Plan is the Sponsor
    - Baylor v. GPA
      - TPA Sued as a Payor due to their Signing the PPO Agreement
  - **Issues**
    - Payment Deadlines
    - Definition of a Clean Claim
    - No Audit or Price Limitations (U&C)
    - TPA is Payor and/or Legally Required to Force Plan to Agree to the Terms
      - Imposes a Fiduciary Role on the TPA
    - Plan & TPA Bound by Contract They Never See (“Bert”)
    - Prevented from Negotiating Directly with Providers

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## Ernie & Bert (the PPO contracts)

- **No Details – The Unclean Claim**
  - PPO contract requires prompt payment (within 30 days)
  - Clock begins upon submission of claim form
  - Plans require additional details for Exclusion, COB, Subrogation and Third Party Liability Purposes.
  - Police departments and auto insurance carriers don't care about your PPO deadline.



## Ernie & Bert (the PPO contracts)



- **No Audit – The Solution**
- Exclude – Don't reduce!
  - Exclusion prohibiting payment of claims "in excess of the maximum allowable".
  - Base ceiling or cap on Usual, Customary, & Reasonable, DRG / Medicare +, etc.
  - Consider Carve Outs

## Ernie & Bert (the PPO contracts)

- Bert
  - **Agreement between PPO & Provider**
    - Never Seen by the Payor (TPA or Plan)
    - Promises Payment to Provider Based on Contractual Terms
      - No Consideration for SPD Limitations



## Ernie & Bert Solutions

- Solution?
  - **Amendment/Joinder**
    - Allows Plan to Sign On as Payor after the fact
    - Amends “Ernie” & Solves “Payor” Issue
    - Passes the Buck from TPA to Plan, but the Issues remain
    - TPA will Still Hear about the Problems when they Arise!
    - Set forth terms that must be agreed to by provider, or provider treated as an out of network entity.
    - Be Innovative – shrink network, increase steerage, and offer incentives to providers



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## The “New” Gap In Town

- Stop-Loss Carriers retaining right to interpret PD independent of plan sponsor
  - Will Perform Their Own U&C Audit
  - Will Adjust Reimbursement to Reflect Their Findings
- Communicate with the Carrier Prior to Making Payment when Claims are Excessive
  - Offer to use the PPO discount or offer to refuse PPO access and process as out of network
- Negotiate with Carrier to Abide by Plan’s Interpretation
- Set Parameters upon which Terms such as U&C are Based

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## Dilution of In-Network Incentives = Reduction of Value to Providers

- **PPO's Historically**
  - Limited Network Size = Exclusivity
  - Valuable Steerage to In-Network Providers
  - Providers Offered Reasonable Prices & True Discounts
- **Present State of PPOs**
  - Expansion of Networks = Less Value for In-Network Status
  - Consumers Demand More Network Coverage
  - Steerage Dwindled, In-Network Status Lost Its Value
  - No incentive to Offer True Discounts on reasonable rates
  - PPO - No Valuable Consideration for Providers

# Overview of State Policy Changes affecting TPAs



## Prompt Pay

- What passed last session?

### Georgia HB 167:

15 business days electronic, 15 calendar days for mail after receipt

## Overview of State Policy Changes affecting TPAs

### Prompt Pay

- What is coming in 2012?

Massachusetts H.B. 2098

Payment or notice rejection in 45 days

New York A.B. 681

Undisputed claims 15 days, all others 30

New York A.B. 4859

Electronic Claims 15 days



# Overview of State Policy Changes affecting TPAs

## Provider Contracting, Rental Networks

- What passed last session?

Connecticut H.B. 6471

Prohibits most favored nation provisions

Oregon S.B. 634

NCOIL pattern Rental network bill



## **Overview of State Policy Changes affecting TPAs**

What is the National Conference of Insurance  
Legislators (NCOIL)?

- NCOIL Rental Network Contract Arrangements Model Act Proposed 2007, finalized 2009





## Overview of State Policy Changes affecting TPAs

### NCOIL Bill

- Original bill sponsored by AMA:
  - Banned rental network arrangements
  - No access except through direct contract
- Final Bill:
  - Requires rental transparency through:
    - Website listing downstream rentals
    - EOP or RA must reference contract



## **Overview of State Policy Changes affecting TPAs**

### **Networking Bills – Back to the Future**

- 2007 Arkansas HB 2627
- 2007 Colorado SB 79
- 2008 Florida S.B. 1012
- 2008 Indiana SB 159
- 2008 Ohio HB 125
- 2009 Rhode Island HB 5453
- 2009 Tennessee SB 694
- 2009 Vermont HB 444
- 2009 Connecticut S.B. 273
- 2010 Connecticut SB 17
- 2010-11 New Jersey A.B. 372 (failed)

# Overview of State Policy Changes affecting TPAs

## Provider Contracting Bills in 2012

- New Jersey A.B. 235
- New York AB 594
- North Carolina SB 517
- West Virginia H.B. 3192



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