

Responding to Managed Care Rate Cuts: A Practical Guide for Psychologists

Facing cuts in already low payment rates is a major frustration for psychologists who deal with managed care companies. Yet because of market forces such as the availability of other mental health professionals as well as antitrust concerns, practitioners can face an uphill battle in challenging rate reductions.

Payment rate problems are significant symptoms of the broken U.S. health care system and, ultimately, Congress will need to solve these problems through real health care reform. In the meantime, practitioners can take actions which, in our experience at the APA Practice Organization, can make a difference.

Consider taking the following steps to help protect your patients and your practice when a managed care company cuts your reimbursement rate.

Step 1: Determine whether and how the rate cut affects you

Know the answers to two important questions:

- When does the cut go into effect? Having this information lets you know how much time you have to react and enables you to determine whether the company has violated relevant terms of your contract.
- To which of the managed care company's panels does the rate cut apply? Some companies have a variety of provider panels and products, and the rate cut may affect them differently. If the pertinent facts are not clear from the rate cut notice, contact the managed care company's provider relations department for clarification.

Step 2: Assess Your Arguments and Bargaining Position Look to your provider contract for possible violations

Your provider contract with the company generally requires the company to give you a certain type and length of notice before it changes your contract, including changing the contracted reimbursement rate. There may be specific requirements for providing notice of rate changes. If you did not receive the required notice, you can assert

this fact as a violation of your contract.

Consider your “market value” to the company’s network

Companies are sometimes willing to negotiate a special fee with psychologists who fill gaps in the network – for example, a rural psychologist who is the only psychologist in a geographic area, or those whose practice area (such as working with children or geriatric clients) is in short supply. If such a situation applies to you, insist on negotiating a special rate. Emphasize the adverse impact on subscribers’ access to care if the company’s refusal to negotiate forces you to accept fewer referrals or leave the network.

Even if you do not fill a unique role in the network, you should consider whether the rate cut will leave company’s network with enough psychologists in your area to provide adequate patient access to mental health care. A common indicator of network inadequacy is that you receive desperate calls from subscribers who have had to contact several psychologists on the company’s provider list before finding one who can give them an appointment. (A “phantom panel” situation may exist where the company’s provider list shows several other psychologists in your area, but they have moved, resigned from the panel or stopped taking patients.) If network adequacy is a problem, you can raise the patient access concern noted at the end of the preceding paragraph. Documenting access problems in your area is one of the most powerful negotiating tactics that practitioners can use.

Compare rates by other payers and assess your alternate sources of revenue

Your bargaining power is greatest if the rate cut will leave other managed care companies or other sources of revenue – for example, private pay or forensic clients -- paying you significantly more than the company that plans to decrease its payment rate. You also will be in a better position to negotiate when you can replace lost revenue (if you cease your participation in the company panel) with income from other sources of payment for your professional services. These considerations factor into whether you should indicate to the company that you intend to change your role in the network, as discussed in Step 4.

Examine the company’s rationale for rate cut

Sometimes the company’s rate cut announcement will state the reason(s) for lowering the rate. You should consider whether the explanation makes sense, particularly as applied to your practice. If the stated rationale does not apply to you – for example, the company claims that it has

too many psychologists on its panel, but you are the only network psychologist in your area -- argue that the rate cut is not justified in your case.

Step 3: Get Information from Your Colleagues and Associations

Antitrust Warning: You can gather helpful information by communicating with other psychologists, your state or local psychological association, or with the APA Practice Organization. However, you must proceed carefully to avoid antitrust risks. (See the sidebar at the end of this article, “Acting in Light of Antitrust Law.”)

Antitrust concerns severely limit the ability of your state and local psychological associations and the APA Practice Organization to take action on rate cuts. In particular, it is illegal for these associations to negotiate rates on behalf of members or to take part in any threatened or actual boycott of a company in order to influence rates because they are considered, by definition, to be organizations of competitors.

Check with your state and/or local psychological association

The state or local associations to which you belong may have useful information, for example, regarding adequacy of the company’s network to provide patient access, or the company’s compliance with the provider contract. The association also can let you know if it plans to convey member concerns to the company or investigate issues such as patient access.

Talk to colleagues about network adequacy and patient access

Your fellow psychologists may be able to help you evaluate the adequacy of the network in your community, or in your area(s) of professional practice. You should not compare notes with other psychologists who are your economic competitors about the rates that you or they set for their services, or about the minimum payment rate that you would be willing to accept from a managed care company. Such communications might be used as evidence of price fixing, which is prohibited by antitrust law. (See the sidebar at the end of this article, “Acting in Light of Antitrust Law” for additional information.)

Contact the APA Practice Organization.

In line with antitrust considerations, the APA Practice Organization is working closely with state psychological associations to take action on rate cuts by managed care plans.

You may contact us if you have questions about dealing with a managed care payment rate cut. We would particularly

like to be informed if the rate cut is substantial or is being applied in more than one state. Contact information appears at the end of this article, following an important disclaimer.

STEP 4: Take Action

This step will focus on action you can take as an individual based on arguments you have developed in Step 2 and further information you may have gathered in Step 3.

Start with a call to the company

Particularly if you have an established relationship with the company's provider relations staffer or other representative, it may be best to start by making an informal call to that individual, approaching it as a "routine" business negotiation. After all, the company is in fact a business, and it should come as no surprise that you expect them to negotiate for the services they need to stay in business. For example, it might be appropriate to note the access problems created by the rate cut having reminded your contact of the many professional services you already have successfully provided to plan subscribers.

Write the company a letter or e-mail

If the straightforward business approach is unsuccessful, move to the next level of action by mixing your negotiating strategy with certain advocacy strategies. Putting your arguments and concerns about access issues into a letter or email is important at this point.

Be concise and clearly lay out your arguments and positions in taking issue with the rate cut. Remember that your audience may well be an overworked insurance company employee with limited time to read your correspondence. Copy state and local psychological associations to which you belong on any communications to the company. Doing so lets them know of members' responses to the rate cut.

Copy your state insurance commissioner and other appropriate regulatory agencies, as well as state legislators. Taking this action shows that you know who else to complain to if the company is not responsive. Your state or local association will be able to guide you as to which government agencies or officials are likely to take an interest in the matter.

Be persistent; follow up. Some companies seem to assume that most providers who complain will eventually drop the issue if the company is not responsive. While taking care not to alienate the people at the company with whom you are dealing, make it clear that you are willing

and able to keep at it until you believe that some resolution has occurred.

[Let the company know if you plan to change your role on the panel.](#)

When acting on your own in response to a rate cut, you are constrained only by the terms of your provider contract, not by antitrust laws. The responses available to you range from reducing the number of referrals you will take from the company to resigning from the company's lower paying networks to terminating your provider contract completely. If you plan on taking any of these actions, check your provider contract first, then warn the company. If the company understands both its potential gaps in access to services and your ability to help the company fill these gaps, it may reconsider how the payment cut applies to you.

If you plan on accepting fewer referrals or not taking any new clients, check to see if your provider contract limits your ability to do so. Some contracts require that if you are on the panel, you must take new patients that the company refers to you under certain circumstances. Even if your provider contract has such a provision, you may still be able to argue successfully that: you already have a full workload and you are not willing to put in extra hours to treat the company's patients at a reduced rate; and/or, that your contracts with other managed care companies contain similar clauses but you are giving priority to the companies with higher rates.

Advising the company that you will be forced to discontinue your participation in the network can be an effective bargaining tool, but avoid indicating your intention to do so unless you plan to carry through. Otherwise, your effectiveness to negotiate with the company on this issue and any issue in the future will be severely compromised. Before resigning, check the termination provisions in your provider contract to make sure that you give the proper notice. If you do leave, use your letter of resignation to send a strong message to the company, state agencies and legislators about the negative impact of the rate cut. Be sure to keep a copy in case the company subsequently fails to remove you from its network listing or to reimburse you at a higher out-of-network rate. Before taking the middle approach of discontinuing your participation in some but not all of the company's networks, check your provider contract first for an "all products" clause that states that you must participate in all of the company's products or networks. Such provisions are unenforceable in states such as Virginia.

NOTE: This article and antitrust sidebar (at the end) do not constitute legal advice. If you need a legal opinion, you should retain an attorney in your jurisdiction with appropriate experience. The discussions of antitrust law are merely a simplified overview of this highly complex area of law. Antitrust law is highly fact-specific and therefore you cannot rely on general guidance like this document. Moreover, antitrust law is less clear than many other areas of law in terms of what exact activities are prohibited and what will lead to prosecution. Antitrust liability can be substantial, and even successfully defending an antitrust investigation or case could be a considerable drain on your resources.

[Contacting the APA Practice Organization for Further Assistance](#)

If you have questions or need further assistance with managed care rate cut issues, contact legal and regulatory affairs staff for the APA Practice Organization at 1-800-374-2723, ext. 5886, or send an email:

praclegal@apa.or

SIDEBAR:

Antitrust law governs competition in the marketplace

Economic competitors, whether giant oil companies or individual psychologists, cannot get together and agree on the prices they will charge (price fixing) or band together and boycott a purchaser in order to affect prices (boycott).

Consider the following information related to antitrust law when planning to take action on rate cuts by managed care companies:

Acting on your own – Antitrust concerns generally do not apply to individual psychologists or practice groups such as partnerships dealing on their own with managed care companies about fee issues. For example, individual psychologists are always free to decide what company rates they will or will not accept, or to set their own rates (though a company may not pay those rates, even if the psychologist is out-of-network). Individual psychologists are also free to cease their participation in the company's network if they object to a rate cut, and to advise the company of their intention to do so.

Acting with other psychologists – Antitrust issues arise once you communicate with or take concerted action with other psychologists who are your competitors in the marketplace. You must exercise great caution to avoid the risk of violating antitrust law.

Steer clear of the following situations:

Price Fixing – Avoid any communications or agreements with competing psychologists that would suggest a joint agreement—for example, a price fixing arrangement where everyone agrees on the minimum rate they should accept from the company or what payment amount constitutes an appropriate rate. Mere discussions about acceptable fees from a managed care company or about the fees you set for your services can create antitrust risk, even if you have no intention of actually agreeing to fix prices.

Boycotts – Avoid any explicit or implicit threats that a group of competing psychologists will boycott the company in an attempt to influence rates. While antitrust law does not define “implicit threat,” you should steer clear of suggesting that you are calling for other psychologists to join you in leaving the network.