The issue of so-called silent PPOs is beginning to get a tad noisier than in the past as Tennessee lawmakers, providers and insurers look for a solution to a complex situation.

A silent PPO is defined differently depending on which side of the debate an individual is on, but it's typically the result of a contracting entity (an insurer) negotiating discounts with a provider and then selling access to the discounts to other, nonrelated parties.

Tennessee legislators failed to pass bills that would have banned silent PPOs altogether.

"They would have been detrimental to health insurance, workers' comp insurance and self-insured entities because they are the benefactors of rental provider networks," said Mandy Haynes Young, an attorney with Miller & Martin in Nashville and a registered lobbyist for Aetna and CIGNA HealthCare.

Senate Bill 3886 and House Bill 3848 would have required that any lower fees paid for medical services after Jan. 1, 2009, be made pursuant to a contract negotiated and signed directly between the provider and employer, insurer, PPO or related entity.

While the bills did not progress through the Legislature, Young and Yarnell Beatty, general counsel for the Tennessee Medical Association, predict the debate will continue in Tennessee.

"This is going to be [an issue] in every state," Young said.

**Background On Silent PPOs.** Young said some companies make contracts with multiple entities for networks and then cherry-pick the best rate for the same service. Doctors perceive that to be a problem because they are getting a lower rate than originally agreed upon.

"There are some groups, it could be argued, that use this in a way that might be disadvantageous to doctors," Young said. "The counterpoint is that is how you create networks and they're not 'silent' because there are assignment clauses in all the contracts that allow the assignment of the contracts to other entities."

The conflict in limiting silent PPOs is that it could gut the valid use of assignment of contracts and the creation of networks. "That has been a very hard thing on which to find a balance," Young said.

Beatty said the key issue is that physicians enter into contracts with health plans and agree to a fee schedule with the health plan. "In a silent PPO scenario, the health plan then goes and purchases a network that the physician might also be in but pays at a lower rate [than what the health plan had agreed to with the provider.]"

So it is an end-run around the contract between the physician and the health plan," he said.

The problem, as Beatty sees it, is usually found as a small note that might read "PPO discount" at the bottom of an explanation of benefit.

"It is becoming more and more prevalent, especially in the past two years, following the implementation of a workers' compensation medical fee schedule in Tennessee," he said.

**Complex Issue.** A small number of states, including Florida and Ohio, have addressed the issue of silent PPOs.

"This is one of the most complicated issues I have dealt with in my 15 years of lobbying for health insurance," Young said.

To begin with, it can be difficult to determine if the issue belongs in the health insurance category or in the workers' comp category where, at least in Tennessee, it seems to be where the issue came to a head.

At least part of the problem was related to data entry as it was discovered that some of the workers' comp payors might not have loaded that fee schedule correctly. If a doctor is board certified, he or she will get paid a higher rate for workers' comp
patients than if he or she is not board certified. Apparently, the certification status of some providers had been entered incorrectly, with some certified providers being paid lower than they should have been paid.

"Therefore, many of the doctors and practice groups concluded this was a silent PPO issue or rental issue," said Young. "So we tried to do a lot of education and worked with various groups to do that."

The passage of Senate Bill 448 in 2007 requires that, as of Jan. 1, 2008, a notice on the bottom of the EOBs for workers' compensation notices needs to indicate payment information. "If they are not the primary contracted party, then that has to be indicated that the provider is being paid based on the rates contracted with some other entity – it does not ban it, it just asks for notification," Young said.

Only workers' comp EOBs were included in the 2007 legislation, because that is where the majority of the original complaints from providers had been generated.

However, the issue is more widespread than just workers' compensation claims. "It happens with any kind of claim imaginable. It primarily affects physicians because they deliver most of the medical care but happens to almost any healthcare provider," Beatty said.

The American Medical Association said that silent PPO activity can represent fraudulent activity and estimated that providers nationwide had lost between $750 million and $3 billion annually since silent PPOs became common in the early 1990s up until the estimate was made in 2003.

Banning Networks? Proposed legislation in 2007 would have banned anything beyond first-tier rental networks for workers comp or health insurance. However, explained Young, if ABC carrier does all of XYZ company's workers' comp and if ABC carrier does not have a network in, say, east Tennessee and wins that bid from XYZ, then ABC is going to rent a network that is already existing in that region.

"They are allowed to do that by the assignment clause that is in the contract," she said. "So if you ban the rental of networks, then you would preclude XYZ from having a national carrier bid on their business in areas where they don't already have a network."

Beatty said there is no intention on the part of those seeking clarification on the issue to do anything that would, for instance, do away with PPOs. "That is absolutely not the case. We understand the need for them and the need for health plans to put together health networks," he said. "All we are asking for is some transparency so when a claim is processed, the physicians are paid at the agreed upon rate."

Another example of the silent PPO problem is mergers and acquisitions, which can cause confusion during transitions. In these kinds of situations, there could be two companies with multiple contracts and determining which rates are applicable at what time could cause many problems.

Legislation Attempts. The two bills considered in the 2008 session would have prohibited the negotiated rates for workers' compensation services from being assigned to or accessible to any other party than the employer, trust, pool, or insurer who signed the contract. The bill also stated that the comprehensive medical fee schedule rates apply if a company marketing itself as a workers' compensation PPO cannot produce a signed contract between the PPO and the provider. The bill was discussed but left in the Consumer & Employees Affairs Committee without going to a vote on the General Assembly floor.

"We did discuss how you could ban somebody from renting 15 networks and then choosing the one that had the lowest price as compared to someone who has the lowest line of rentals and a legitimate declaration of who is primary, secondary and tertiary in that line," Young said.

Outlook. There is already too much smoke and too many mirrors in the healthcare industry, which is trying desperately to become more transparent. Transparency would not only increase efficiency and cut costs, but it would also weed out those companies looking to play Three Card Monte with providers.