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DRUG & PHARMACY ALERT

2/10/15

Aetna Fined $1 Million for Misleading Pharmacy Benefit Customers

Late last week, the Centers for Medicare & Medicaid Services (CMS) issued a Notice of Imposition of Civil Money Penalty to Aetna to the tune of $1 million for erroneously identifying nearly 7,000 non-network retail pharmacies as “retail in-network” for 2015 via its website and through its call center customer service representatives during the calendar year 2015 Annual Election Period.

According to the Notice, the confusion created by the errors in Aetna’s pharmacy network directory led to disruption in the marketplace and harmed consumers who signed up for pharmacy benefit plans based on the erroneous information. After January 1, 2015, many enrollees learned for the first time that their pharmacy was not actually in their Aetna plan’s network and, as a result, had to either pay for prescriptions in cash or leave the pharmacy without their prescription. The Aetna pharmacy network debacle led to an incredible volume of complaints to CMS – accounting for 33 percent of all those received – the vast majority of which were complaints from Medicare beneficiaries who had been misled about in-network pharmacy coverage.

The CMS fine levied against Aetna is essentially a self-inflicted, and not undeserved, wound. Aetna, like many other Pharmacy Benefit Managers (PBMs), made drastic cuts for the 2015 benefit year to the number of pharmacies “in-network,” casting out of its network a sizeable number of pharmacies that served nearly 222,000 members that were previously “in-network” in 2014. The cuts were so substantial, in fact, that Aetna itself lost track of pharmacies that were “in” versus those that were “out,” and thus passed misleading information on to both its own customers and to CMS. The ongoing PBM purge of pharmacies continues to degrade the pharmacy / consumer relationship, and make it increasingly difficult for consumers to obtain needed medications as smaller, independent pharmacies nationwide continue to be cast out of PBM plans.

Both consumers and pharmacies must continue to voice complaints about this, and other types of misconduct by PBMs, to CMS and other relevant state and federal agencies. In addition, as noted in our Drug & Pharmacy Alert of January 10, 2015, PBMs are aggressively serving termination notices of provider agreements with pharmacies, often on a pretextual basis. The PBMs are terminating the majority of providers based upon competitive interests of the PBMs and not due to any wrongdoing by the provider pharmacy. It is imperative for provider pharmacies to react immediately after receiving the termination notice. The combination of attacking the PBM for bias and harm to patient care, while demonstrating proper compliance with state and federal Medicare laws and if necessary, filing a Complaint and pursuing Restraining Orders, have provided positive results for provider pharmacies.

For further information, please contact any of the following lawyers at Roetzel & Andress.

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