

CORPORATE COMPLIANCE ALERT

1/10/15

Pharmacy Benefits Managers Ring in New Year by Serving Termination Notices of Provider Agreements with Pharmacies

Pharmacy Benefit Managers' (PBM) termination of Provider Agreements (PA's) for specialty pharmacies that have allegedly failed to comply with the mandates of the PA seems to be on the rise, with devastating results to the specialty or network pharmacy. Throughout the country pharmacies are receiving termination notices pursuant to their respective Provider Agreements (PA) from various PBMs either for cause, based upon an alleged risk, or pursuant to a not-for-cause termination notice. Commonly, the not-for-cause termination allows the PBM to terminate the PA. When this occurs, there are limited remedies available in law, but depending upon the circumstances, several remedies under equity can be asserted against the PBM. If the termination is for cause, it has been successful to demonstrate the provider pharmacy has an effective compliance program that either has or will address the "risk concern" expressed by the PBM. Many of the risks asserted by the PBMs for cause termination derive from co-pay waivers, HIPAA and lack of proper Business Associate Agreements, mail orders, diabetic supply cold calls, compounding, pharmacies, marketing sales forces and non-compliance with the PA.

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.

Given that a whistleblower's "share" of any settlement or damage award in an FCA matter may be significant, the incentives are great for Medicare Part D sponsors and their PBMs to closely scrutinize all prescription drug claims for compliance with state and federal laws as well as the PAs. With this climate, all pharmacies would be well advised to review all PAs and understand the importance of proper documentation and recordkeeping in their dispensing of prescription drugs. In addition, pharmacies should take a proactive approach to compliance. Pharmacies should conduct risk assessments of all high-risk areas, establish corrective plans to remedy any existing problems, train employees on fraud, waste and abuse, and implement an effective and efficient compliance program. These proactive measures are critical to a quick response upon receipt of a termination notice.

Roetzel's Corporate Compliance attorneys are experienced in both the regulatory issues of the pharmacy industry and the FCA. For further information, or a review of your current compliance procedures and manuals, please contact the following Roetzel attorneys:

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