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UnitedHealth Group Inc. headquarters in Minnetonka, Minn.

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United Healthcare's OptumRx Accused of Defrauding Benefit Plan

By Meg McEvoy

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- *Union employee benefits plan suing OptumRx, United Health's PBM, for breach of contract and fraud*
- *Plan alleges OptumRx had incentive to approve claims for self-funded plan and profit from manufacturer discounts*

OptumRx, the pharmacy benefit manager owned by United Health Group, the nation's largest health insurer, is being sued over allegations that it wasted tens of millions of dollars of a union benefit plan's money when acting as the plan's PBM.

The complaint, filed Aug. 24 in California Superior Court, alleges that OptumRx breached its contract with an employee benefit plan, paying out for fraudulent and illegitimate claims that were supposed to be excluded under the plan.

OptumRx failed to stop the payment of fraudulent and illegitimate claims in order to reimburse for as many claims as possible and profit off the “spread” between what pharmacies pay for the drugs and the discounts the PBM got from the manufacturers, the plan alleged.

PBMs, which administer pharmacy benefits on behalf of self-funded benefits plans, managed care organizations, and insurance companies, have faced scrutiny by the Trump administration for being drug “middlemen” that raise prices. A number of pending regulations would require more price transparency and challenge the way PBMs have profited historically. “This case is just one of the many prongs of attack against PBMs in the current atmosphere, including regulatory action, Trump administration policies, and litigation,” Justin C. Linder, of counsel with Dughi, Hewit & Domalewski in Cranford, N.J., told Bloomberg Law. Linder is a health-care attorney who represents pharmaceutical companies in their negotiations with PBMs.

“PBMs certainly have targets on their backs with a lot of different stakeholders,” he added.

The rocky landscape does not seem to be stopping other companies from seeking to get into the PBM business, however. CVS's acquisition of Aetna would create a vertically integrated insurer and PBM, and insurer Cigna is seeking to acquire PBM Express Scripts.

Allegations Against OptumRx

The plan alleges that, although OptumRx claimed that it would detect fraud and abuse and would reclaim overpayments by the plan, OptumRx turned a blind eye to prescription fraud.

“The more prescription drug claims [OptumRx] approves [...], the more money it makes, regardless of whether those claims are legitimate or are fraudulent, wasteful, or abusive,” the complaint says.

“PBMs such as OptumRx typically earn a ‘spread’ on claims they process, wherein the price the PBM pays to a pharmacy for a prescription drug is less than the amount the PBM collects from the benefit plan trust fund, benefit plan sponsor, or other party responsible for payment,” the complaint states. “In many cases, the spread is significant.”

OptumRx allegedly ignored data regarding prescribing irregularities and enabled fraudulent claims for compounded pharmaceuticals, despite its knowledge of a nationwide problem with overpriced prescriptions for compounded drugs. OptumRx

also allegedly approved claims that should have been excluded, such as for nutritional supplements and over-the-counter medications. OptumRx also allegedly failed to pass on rebates and discounts offered by drug manufacturers under their agreement with the plan.

According to the plan, OptumRx behaved differently when processing claims on behalf of United Health, its parent company, and when processing on behalf of the plan.

"When OptumRx acts as the PBM for UnitedHealth's plans, OptumRx and UnitedHealth have a joint financial interest in reducing the volume and costs of prescription drug claims because doing so reduces OptumRx's and UnitedHealth's costs relative to revenues," according to the complaint.

Linder says there will be significant hurdles to the plan succeeding in this case. The plan's agreement with OptumRx contains a mandatory arbitration provision as well as a choice of law provision that could control what laws apply to disputes under the agreement. Either provision could enable OptumRx to kick the plan's claims out of the court in which it was filed.

Attorneys for the parties did not respond to requests for comment.

Other PBM Challenges

Litigation against PBMs is commonly brought under federal employee benefits law on behalf of plan beneficiaries, according to Linder.

One case, *In re Express Scripts*, currently before the U.S. Court of Appeals for the Second Circuit, was brought on behalf of plan subscribers, alleging that an agreement between insurer Anthem and Express Scripts that allowed the PBM to set drug prices breached Express Scripts' fiduciary obligations to the plan.

The Trump administration has also "come in swinging against PBMs," Linder said. The Department of Health and Human Services recently submitted a proposed regulation that would require price transparency in PBM administration of Medicare and Medicaid drug programs. The HHS has proposed removing safe harbor protections from anti-kickback laws for prescription benefit plans that would mean that plans can no longer take advantage of rebates.

"Rebates are such an important aspect of the relationship between insurers and PBMs, that you'd have a whole restructuring of those relationships" if the policy were to be adopted, Linder said.

There is also an Ohio Medicaid rule going into effect in January that would require PBMs' savings to be passed on to plans, Linder said. PBMs would be able to charge administrative fees for their services, which will presumably go up.

All of these challenges to the current pharmaceutical reimbursement and distribution system have the potential to be disruptive, Linder said. "Every tweak has a counterpoint. When you're dealing with such a complex system, you have to see the forest for the trees and not operate under the misperception that one tweak is going to cure the disease. There are a lot of issues to be addressed."

The case is *Weschler v. OptumRx*, Cal. Super. Ct., No. CGC18569152, filed 8/24/18 .

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