

TRICARE Claims Processing Suspension

Insight — 11/10/2015

Warning: TRICARE Claims Processing Suspension May Occur During Health Care Fraud Investigations for Compounding Pharmacy Prescriptions

Yesterday, the Wall Street Journal (WSJ) reported on a significant federal investigation regarding compounding pharmacies and compound pharmaceutical prescriptions for TRICARE beneficiaries in at least four states. TRICARE, the federal health benefit program under the Defense Health Agency, provides health care benefits for more than 9.5 million current and retired members of the uniformed services and their families. TRICARE health care fraud allegations can result not only in civil and criminal sanctions, but also in TRICARE claims processing temporary suspensions, as well as provider exclusion and termination from TRICARE and other federal healthcare programs.

Health Care Fraud: Civil and Criminal Action

According to the WSJ there were four civil fraud settlements by Florida pharmacies last month that will soon be reported. These settlements – amounting to \$12.8 million – are based upon allegations of falsely billing TRICARE for expensive pharmaceutical creams and gels to treat pain, scars, and other ailments. The WSJ reported that federal prosecutors are pursuing “numerous criminal investigations,” and the U.S. Attorney for the Middle District of Florida anticipates filing criminal charges in early 2016 against pharmacies, drug marketers, and physicians cited in the settlements. Separate Justice Department investigations on compounding pharmacies are ongoing in California, Mississippi, and Texas.

Earlier this year, the Military Times reported that TRICARE began a new compound pharmaceutical medication screening process in response to aggressive direct marketing campaigns by compounding pharmacy marketers.¹ In addition, the TRICARE program issued an article regarding TRICARE beneficiaries being targeted by call centers and others for unsolicited medical prescriptions.² And in July, a Jacksonville-based compounding pharmacy settled with the government for \$8.4 million dollars for allegations that from February 2015 to April 2015 it had sought reimbursement for compounding pharmaceutical prescriptions that were not medically necessary and were written by physicians who had never actually seen the patients.³ Clearly, the federal government has focused on alleged TRICARE abuse of compound pharmaceuticals this past year.

TRICARE Suspension, Exclusion, and Termination: A Separate Administrative Action

The federal criminal and civil investigations of compounding pharmacies are only part of the story. TRICARE health care providers who prescribed compounding pharmaceuticals may have their TRICARE claims processing temporarily suspended during the investigations. The Defense Health Agency has the administrative ability to:

- Temporarily suspend TRICARE claims processing for a provider; and
- Exclude or terminate a Provider from the TRICARE Program.⁴

These sanctions are *in addition to* – and not in lieu of – any other remedies or sanctions authorized by law or regulation.⁵

Temporary suspension of TRICARE claims processing is the first step the Defense Health Agency usually takes on allegations of health care fraud or abuse. Other steps may include administrative action to exclude or terminate the provider from the TRICARE Program. This in turn results in provider exclusion from Medicare and other federal government health care programs.

Fortunately, providers are entitled to present evidence to the Defense Health Agency rebutting allegations that led to the TRICARE claims processing temporary suspension. In addition, there are several levels of administrative procedures and appeals that take place when a provider is temporarily suspended from TRICARE claims processing and before a provider is excluded or terminated from the TRICARE program.⁶ Unfortunately, while the government sorts out and reviews all the information that led to the temporary suspension of TRICARE claims processing, a providers' practice may be curtailed severely – especially if the suspension extends for 18 months, the maximum length of a TRICARE claims processing suspension.⁷

Providers who are either temporarily suspended or are facing exclusion or termination from the TRICARE program must carefully navigate the Defense Health Agency's administrative process. If a provider receives a TRICARE claims processing temporary suspension notice from the Defense Health Agency, the provider should seek legal counsel to assist in responding to the Agency.

For more information regarding the TRICARE program, or any federal health care program, please contact:

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Ms. Bonner represents clients before the Defense Health Agency and other federal health care agencies. As a former agency counsel attorney for the TRICARE program, and as an attorney counseling federal health care companies and providers for federal health care programs, Ms. Bonner has a deep understanding of federal health care programs, statutes, regulations, processes and procedures.

For questions regarding this update, please contact:

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¹<http://www.militarytimes.com/story/military/benefits/health-care/2015/04/30/tricare-compound-medications-express-scripts/26634225/>

²<http://www.health.mil/News/Articles/2015/04/10/TRICARE-Beneficiaries-Being-Targeted-by-Call-Centers-and-Others>

³<https://www.fbi.gov/tampa/press-releases/2015/united-states-settles-false-claims-act-allegations-against-jacksonville-based-compounding-pharmacy-for-more-than-8-million>

⁴32 CFR § 199.9(f)

⁵32 CFR § 199.9(a)(3)

⁶32 CFR § 199.9(h)

⁷32 CFR § 199.9(h)(1)(vi)(A)

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