

Third Party Administrator & Pharmacy Benefit Manager Update

TPA & PBMLICENSING AND COMPLIANCE DEVELOPMENTS

Department of Labor Sues UnitedHealth TPA Over Claim Denials

The U.S. Department of Labor (“DOL”) recently filed a lawsuit against UMR, Inc., a third-party administrator and UnitedHealth Group, Inc. subsidiary. The lawsuit alleges that UMR denied thousands of claims based on diagnosis codes and allegedly failed to comply with the requirements of the Patient Protection and Affordable Care Act, as amended (“ACA”) and the DOL’s claims procedures regulation. What makes this lawsuit unusual is that the DOL has requested a nationwide injunction against UMR with respect to allegedly improperly denied claims.

Specifically, the DOL alleges that UMR violated ERISA by denying all urinary drug screenings from August 2015 to August 2018, rather than determining whether a claim was medically necessary.

The DOL also alleges that from August 2018 to the present, UMR allowed some urinary screenings that were done in an emergency setting but changed its denial code in October 2019. The DOL further alleges that the UMR “Explanation of Benefit” forms (“EOB”) also did not comply with the ACA. Specifically, the DOL alleges that after denying a patient emergency room claim, UMR sent an EOB form to claimants that had insufficient information.

The DOL’s lawsuit further alleges that the denied claims did not point to specific plan provisions or rules, did not apply the prudent person layperson standard, did not inform claimants of the informal approval process, and did not state whether there was a lack of documentation or additional information to explain the claims decision.

Finally, the DOL alleges that patients who had urinary drug screening payments denied were similarly given limited information as UMR allegedly did not reference plan provisions or provide a description and explanation of the denied urinary drug screening claims. Interestingly, in a press release regarding the lawsuit, the DOL asserts that:

“UMR’s alleged decision to deny claims violated its obligation as a fiduciary under its administrative service plan documents and the law.”

Third-party administrators and employers of self-funded plans should understand that the DOL is alleging that a systemic failure to address claims properly rises to the level of a breach of fiduciary duty that calls for a substantive remedy (in this case, an injunction). The DOL’s lawsuit against UMR should be monitored to see how this law regarding fiduciary breach develops. In our experience, this is a relatively new tactic by the DOL and suggests that a plan’s or third-party administrator’s claims procedures can be important and may be subject to further scrutiny by the DOL and other stakeholders.

A copy of the DOL press release with a link to the complaint can be found [here](#).

Polsinelli's Insurance Group and Employee Benefits Group have worked with numerous third-party administrators and employers to address claims issues to ensure compliance with both insurance regulatory and ERISA requirements. To learn more, please contact one of the authors or members of our [Insurance Group](#) and [Employee Benefits and Executive Compensation Group](#).

Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Services

Polsinelli's Third Party Administrator and Pharmacy Benefit Manager Team has significant experience representing TPAs and PBMs on a national basis regarding a variety of business and compliance issues. The group includes attorneys who were formerly in-house counsel for TPAs, as well as attorneys who were formerly insurance regulators and attorneys who are currently members of the Federation of Regulatory Counsel.

Polsinelli's experience in the third party administrator and pharmacy benefit manager industries is demonstrated by these representative examples:

- National and multi-state TPA and PBM licensing projects.
- Assistance with investigations, market conduct examinations and formal regulatory actions brought by state insurance departments.
- Monitor regulatory and legislative activity affecting our TPA and PBM clients and provide periodic reports regarding such activity.
- Maintain licensure as a TPA or PBM through periodic renewal and annual report filings.

To learn more about Polsinelli's [Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Services](#) practice, contact a member of the Third Party Administrator and Pharmacy Benefit Manager Licensing and Compliance Services team.

POLSINELLI'S THIRD PARTY ADMINISTRATOR AND PHARMACY BENEFIT MANAGER LICENSING AND COMPLIANCE SERVICES AND EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION TEAM



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