Payments Uncertain as Insurers' Agreements Expire

BY ALICIA AULT
Associate Editor, Practice Trends

LAS VEGAS — As more of the agreements signed by several large insurers to settle a class action suit alleging inappropriate billing practices expire, the possibility is increasing that the companies will return to the same behavior, especially given that many are being accused of violating the terms already, reported a compliance expert at a physicians' meeting.

Several of the health plans have said they will continue to comply with the terms of their settlements once they expire, but "not all have said that," said Edward R. Gaines III, vice president and chief compliance officer for Healthcare Business Resources in Durham, N.C., who spoke at a meeting on reimbursement sponsored by the American College of Emergency Physicians (ACEP).

Mr. Gaines said that noncompliance among all the plans that have settled has continued to be an issue, which is being dealt with in the courts and administratively. But, "the problem is, once the settlement agreement expires, I can't go back into federal court through an easy process to make my complaint heard," he said.

The settlements were struck in response to Multidistrict Litigation 1334, which was certified as a class action in U.S. District Court for the Southern District of Florida in 2002 and named Aetna Inc., Anthem Insurance Cos. Inc., Cigna, Coventry Health Care Inc., Health Net Inc., Humana Inc., PacifiCare Health Systems Inc., Prudential Insurance Co. of America, United Healthcare, and WellPoint Health Networks Inc. as defendants.

The suits alleged that the insurers violated the federal Racketeer Influenced and Corrupt Organizations Act by engaging in fraud and extortion in a common scheme to wrongfully deny payment to physicians.

Several state and county medical societies filed the suits on behalf of virtually every physician in the nation—about 900,000 doctors.

United Healthcare and Coventry both were summarily released from the litigation. Their release has been upheld on appeal.

Aetna and Cigna struck agreements that entailed an immediate payout in response to claims filed by physicians, some changes in billing behavior, and an agreement to provide prospective relief—$300 million from Aetna and $400 million from Cigna.

Cigna's 4-year agreement has now expired, and Aetna's 4-year agreement expired in June 2007; but Aetna's agreement was extended through this month because of compliance disputes. After an investigation, the New Jersey insurance department fined Aetna $9.5 million in June 2007 for failing to properly pay for out-of-network providers. The insurer is paying nonparticipating physicians only 125% of Medicare rates and informing patients that they are not responsible for the difference.

The national-level ACEP, the North Carolina chapter of ACEP, Wake Emergency Physicians, and the North Carolina Medical Society all subsequently followed up with a complaint to the North Carolina insurance department in November, said Mr. Gaines. The North Carolina group is challenging bundling of 12-lead ECGs into evaluation and management codes, and bundling of other procedures that use the CPT-25 modifier codes.

"If we don't get prompt action from Aetna, we're going back to court [to] ask for an extension of the settlement agreement term," he said.

The American Medical Association and Aetna recently announced that they are working together to resolve outstanding complaints.

Prudential's agreement expires in 2009, and agreements with three other insurers expire in 2010: HealthNet, Anthem/WellPoint, and Humana.

Agreements were reached with 90% of the nation's Blue Cross and Blue Shield plans. The Blues plans agreed to similar terms as did the other payers, with one exception: Anthem/WellPoint and the Blues plans refused to accept assignment of benefits. In fact, the Blues plans were willing to walk away from the settlement if they did not win that concession, said Mr. Gaines.

Mr. Gaines urged physicians to hold the health plans that settled accountable to their agreements.

Information on settlement terms and how to dispute claims can be found at www.hmosettlements.com. ■