

Health Care Alert: Aetna Is Fined \$9.5 Million for Unfair Practices and Ordered to Pay Non-Participating Providers' Billed Charges

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On July 23, 2007, the State of New Jersey, Department of Banking and Insurance (DOBI) levied fines in the amount of \$9,475,000 against Aetna Health, Inc. and ordered Aetna to reprocess certain claims from non-participating providers so that the claims are paid in the amounts of the providers' billed charges. According to the DOBI, the action arose out of "Aetna's refusal to appropriately cover certain services provided by out-of-network health care providers". These services include: 1. emergency services provided by non-participating providers; 2. services rendered by non-participating providers during an admission to a network hospital by a network physician; and 3. services rendered by non-participating providers pursuant to a referral or authorization from the HMO.

In June 2007, Aetna issued a letter to certain non-participating providers who had rendered services to Aetna members. The letter stated that payment for services rendered by a non-participating provider is based on Aetna's "determination of a fair payment for services provided." Aetna decided that the fair payment amount would be 125% of the Medicare allowable amount, and that it would not consider additional reimbursement above that amount. Certain non-participating providers threatened collection actions against patients (Aetna members) if they did not receive the difference between their billed charges and the Aetna payment.

New Jersey, like most states, have laws that require an HMO to limit a member's liability for covered services to the copayment, deductible or coinsurance. This limit of liability applies to emergency services rendered by non-participating providers; to services rendered by non-participating providers during an admission to a network hospital by a network provider; and for services rendered by non-participating providers pursuant to a referral or authorization by the HMO. The law also provides that HMO members have the right to "be free from balance billing by providers for medically necessary services that were authorized by the HMO except for copayments, coinsurance and deductibles". As such, the DOBI said that Aetna must pay the non-participating provider a benefit large enough to insure that the non-participating provider does not balance bill the member for the difference between the provider's billed charges and the Aetna payment, even if it means that Aetna must pay the provider's billed charges (less the member's copayment, coinsurance or deductible).

The DOBI ordered Aetna to cease using 125% of the Medicare allowable amount as the maximum allowable charge. It also ordered Aetna to reprocess all claims under insured contracts issued in New Jersey for such services rendered by non-participating providers, so that the total benefit paid amounts to the provider's billed charges. Any additional amounts payable are to be accompanied by 12% interest accruing from the date the claim was initially paid.

The \$9,475,000 fine levied against Aetna included \$7,747,500 for "not attempting in good faith to effectuate prompt, fair and equitable satisfaction of claims for services rendered by non-participating providers." Aetna has stated that it intends to appeal.

For more information on this matter or any other issue related to Health Care Law, please contact Brian M. Foley, Esq. or any member of Schenck, Price, Smith & King's Health Care Practice Group.