$120 Million Aetna Settlement Creates Physician Payday

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Thousands of physicians stand to collect some cash from a proposed $120 million settlement that Aetna reached last week with organized medicine, Aetna beneficiaries, and other plaintiffs in a class-action lawsuit over rates paid to out-of-network providers.

The pay-out will range from a few hundred dollars to possibly $5000 or more, depending on how physicians choose to participate in the settlement, which awaits approval from a federal district judge in Newark, New Jersey.

The plaintiffs in the case, including the American Medical Association (AMA) and 10 state medical societies, accused the giant insurer of systematically underpaying physicians and other clinicians who were out-of-network providers. Such providers are entitled to the lesser of either their billed charges or the "usual, customary, and reasonable" (UCR) fee for the particular service rendered. Unlike network providers, who must accept the insurer's reimbursement rate as payment in full, non-network providers are free to bill patients for the balance of their charge after subtracting what the insurer paid.

The AMA and other plaintiffs were not challenging these contract terms. Instead, they said that Aetna set out-of-network UCR rates at artificially low levels. As a result, Aetna transferred "crushing medical costs" to patients that should have been covered under their policies. And when out-of-network providers who were shortchanged on insurance reimbursement balance-billed these patients, they did not always collect their money, according to their suit.

The lawsuit alleged that Aetna lowballed UCR fees using a database called Ingenix that was developed by UnitedHealth Group and marketed to the rest of the health insurance industry. UnitedHealth Group settled a similar class-action lawsuit over out-of-network reimbursements in 2009 for $350 million. Class-action lawsuits filed against Cigna and WellPoint on this same issue are pending.

By their very nature, settlements such as those reached by Aetna and UnitedHealth Group contain no admission of wrongdoing. Parties at the receiving end of a class-action suit sometimes settle to avoid the risk for bigger payouts should they lose in court.

How the Settlement Pie Gets Sliced

The proposed $120 million settlement in the Aetna case is literally payback time for physicians who were paid as out-of-network providers from 2003 to the present.

The agreement divvies up the money among 3 funds, the largest of which is the $60 million general settlement fund. Both clinicians and patients can tap into this money, but they have to share it with others. Plaintiffs' attorneys will likely get a hefty cut, although the exact percentage has not yet been determined. The fund also will cover so-called incentive payments to individual plaintiffs — who include a handful of physicians representing the provider class — as well as the cost of administering the settlement.

To collect from the general settlement fund, clinicians need only demonstrate that they were out-of-network providers for Aetna during any of the years from 2003 to the present. They will receive $40 for each of those years, a figure that could be whittled down depending on how many clinicians line up for a payment.

The general settlement fund represents the easiest method of getting paid, but the check is guaranteed to be for only a few hundred dollars at most. By submitting more paperwork, clinicians can possibly collect more from an additional $20 million provider "prove-up" fund. Here, clinicians must submit documentation that they billed Aetna for out-of-network claims and balance-billed the patient but failed to collect all that they were owed. Under the proposed settlement, they would receive the lesser of either the outstanding balance of the out-of-network claims or 5% of the "allowed" amount of the claims that Aetna had agreed to reimburse.

To collect anything, however, the amount of unpaid claim balances must top $750 for an individual clinician and $1000 for a group practice. In addition, if clinicians apply for the general settlement fund, they cannot seek payment from the provider prove-up fund.

Joe Whatley Jr, an attorney for organized medicine in the case, told *Medscape Medical News* that quite a few out-of-network clinicians racked up more than $100,000 in claim allowables, meaning that they theoretically could receive at least $5000 from the $20 million provider fund. However, these payments would be reduced proportionally if the fund is oversubscribed in terms of claims. In other words, if too many physicians want some of the settlement pie, the slices get smaller.

The settlement also creates a $40 million prove-up fund for Aetna beneficiaries that works along the same lines. Any unspent money from the general settlement fund will spill equally into the 2 prove-up funds unless one is oversubscribed and the other undersubscribed. In that event, the spillover goes to the oversubscribed fund. Up to $5 million can switch from an undersubscribed fund to an oversubscribed one.

The settlement is subject to both preliminary and final approval by the federal district court in Newark. Once the agreement receives preliminary approval, physicians who did business with Aetna as out-of-network providers will receive instructions on what to do. In a filing with the Securities and Exchange Commission, Aetna said that it expects final approval in mid-2013.

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