

## Putting the Recent Surge in Investigation of Drug Treatment Marketing, Recruiting, and Billing Practices in Context



Over the past week, we have learned of over a dozen drug

treatment providers across Southern California and beyond who received a letter blasted out by Health Net, and from the range, our sense is that this was a shotgun blast to hundreds of providers. More information about the letter can be found on our law firm [blog](#). I would be glad to share a copy of the letter with anyone who has not seen it.

In a nutshell, the letter requests that treatment providers provide documentation (with a sworn statement) concerning:

- (i) the procurement of insurance policies to cover individuals for drug treatment who do not reside in Southern California or whose address information is suspect;
- (ii) the failure to collect and waiver of copayment and coinsurances;
- (iii) the charging of inconsistent rates to different payors for drug treatment services;
- (iv) the payment of referral fees and kickbacks in marketing to induce the referral of drug rehab patients; and
- (v) the lack of medical necessity for patients.

The letter is interesting and, I believe, significant, in that it signals an aggressive approach from a leading health insurer against practices that Health Net and others regard as fraudulent and abusive. In particular, it follows a similar strategy employed by health plans in Florida in late 2015—a broad investigation of providers, not targeted but questioning practices across the industry. The investigation is accompanied by stoppage of payments pending the provision of extensive documentation. The goal appears to be not only stopping or at least slowing payment, but also deterring not only breach of contract or illegal practices, but also practices that insurance companies simply do not like. In other words, the letter is a “warning shot” to the industry.

The insurance company activity is a response to the explosive growth of drug treatment claims, and part of a cycle that I described recently on my [blog](#) in the [context of drug testing](#). In the years since the enactment of the Mental Health Parity Act of 2008 and the Affordable Care Act, the landscape of drug treatment reimbursement has expanded radically. While this was a blessing for those in need of treatment, the rapid growth has led to rising concerns over provider fraud and abuse. The issues of inappropriate “sourcing” of patients, paying for referrals, and lack of medical necessity are the ever-present concerns when healthcare becomes profit-rather than quality-focused.

While only time will tell, we believe that the Health Net letter represents a shift that should command the attention of all providers. In general, the drug treatment industry in California has enjoyed a period of relatively light enforcement. This has led the insurers to expand their special investigations units and to step into the gap by identifying fraud (increasingly through data analytics), pressuring regulators to pursue the worse cases through administrative actions, and encouraging local district attorneys to initiate criminal actions.



Some elements of the Health Net investigation are entirely unsurprising. Paying for referrals, for example, is an illegal practice that needs to come to an end. In general, drug treatment providers need to be paying closer attention to their relationships with marketers and to understand the difference between legal and illegal forms of marketing. This is an area where we expect to see movement from state regulators and legislators to broaden the scope of anti-kickback laws, but even under existing law, there is no legitimate way to pay a per patient fee to marketers.

Other aspects of the Health Net investigation touch on much more complex questions. Although California law does not compel the upfront collection of copays, coinsurance, and deductibles, Health Net's letter asks for proof of upfront payment. Other insurers have also recently begun to request proof of payment as part of the utilization review process. These demands are aggressive, particularly given that the ordinary practice of the healthcare industry has been to provide services and seek patient payment after the fact. While California law certainly does not allow providers to turn a blind eye to patient financial responsibility, it does recognize and allow for commercially reasonable practices, such as prompt pay discounts and recognition of financial distress. Similarly, there is no requirement to pursue patients through collection actions without regard to their financial status. In short, there are right and wrong ways to handle patient financial responsibility. At the same time, the recent letter indicates that the insurance companies are taking an aggressive response to perceptions that drug treatment providers are ignoring patient financial responsibility.

Even more complex is the question of how patients procure their insurance. The availability of individual insurance coverage through Covered California and the other state health insurance exchanges has opened up the possibility of previously healthy patients with addiction problems obtaining coverage as a prelude to presenting for treatment. The Health Net investigation has focused on patient addresses because of perceptions that the drug treatment industry is aggressively signing up uninsured people in order to generate profits. (In addition to the letters, Health Net persuaded the Department of Insurance to suspend insurance broker licenses for questionable patient enrollments.) As with patient financial responsibility, this is an area where there are legitimate and illegitimate practices. Providers need to understand where the lines are, and be wary of marketers who are engaged in illegal practices.

The final issue raised by the Health Net investigation is medical necessity. As in all parts of the healthcare industry, there is a wariness of healthcare providers that are volume- rather than value-focused. Providers should expect rising standards for documentation of patient condition, services rendered, and outcomes. We expect to see increasingly aggressive positions on coverage and demands for repayment from providers who do not document their compliance with coverage requirements.

These issues are the most "top of mind," but they are only the beginning of important regulatory concerns that warrant attention. As attorneys, our priority is ensuring that our clients are informed and mindful of an evolving regulatory enforcement environment as they grow and sustain their organizations. In coming months, we will be providing more information about the changing regulatory landscape in addiction treatment, including events to address these and other issues in greater detail. In the interim, we encourage drug treatment providers to examine their practices.

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