



Arkansas Blue Cross Blue Shield Lupron Payments

Topics Covered: Payment Issues (for Physicians), Medicare

Outcome: Very Favorable

Issue

The issue in this administrative proceeding was whether a Medicare fiscal intermediary could recover alleged overpayments it had made to physicians for prescription medications, when the physicians were without fault and the fiscal intermediary had implemented ambiguous and inconsistent payment policies.

AMA Interest

The AMA opposes unfair and untimely efforts by payers to recover money paid to physicians for their services, particularly if the physicians continued to render services or incur expenses under the good faith belief that the money they were being paid was the amount they were entitled to receive.

Case Summary

Approximately 120 urologists, oncologists, and other physicians (located primarily in Oklahoma and New Mexico), resisted an attempt by Blue Cross & Blue Shield of Arkansas (Arkansas Blue), a Medicare fiscal intermediary, to secure a refund of alleged overpayments made for Lupron. Fiscal intermediaries operate under directives from the federal Centers for Medicare & Medicaid Services (CMS), which funds Medicare. Lupron, most commonly prescribed by urologists and oncologists, is a drug used to treat prostate cancer, among other medical conditions. Because prostate cancer is an age-related illness, many of the patients using it are covered by the Medicare program.

Beginning in July, 2001, Arkansas Blue announced that it would no longer reimburse physicians who administered Lupron at the Lupron average wholesale price. Instead, Arkansas Blue would pay at the scheduled rate for a less expensive drug, Zoladex, which Arkansas Blue claimed was equally effective. These announcements, however, were ambiguous and inconsistent, and Arkansas Blue continued to pay physicians at the Lupron price through approximately March, 2003.

In April, 2004, Arkansas Blue sent letters to physicians within its coverage area advising them of overpayments for Lupron and requesting records pertaining to Lupron usage as a basis for refund of the supposed overpayments. Arkansas Blue claimed the overpayments ranged from around \$10,000 to \$200,000 per physician. The total refund claim came to several million dollars.

Under the Medicare laws, if an amount paid to a provider of services is beyond the amount allowable under those laws, the excess may be recovered from the provider, subject to certain exceptions. One of those exceptions is that an overpayment may not be recovered if "such provider of services ... was without fault with regard to the payment of such excess over the correct amount." The physicians argued that they were "without fault" and therefore had no obligation to repay the alleged overpayments. They further argued that, due to the ambiguities and inconsistencies of the Arkansas Blue payment policies, coupled with its continued reimbursement at Lupron rates, the physicians could not have been expected to know that they would only be paid at Zoladex rates.

Ultimately, CMS accepted the physicians' "without fault" argument. As a result, CMS sent letters to the physicians who protested the repayment letters, stating that it would not allow Arkansas Blue to recoup the supposed overpayments.

Litigation Center Involvement

The Litigation Center contributed toward the physicians' legal expenses.