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White Bagging Is Used to Cut Specialty Drug Payments, Lawyers Say

By Nina Youngstrom

Health plans are using so-called white-bagging policies to reduce payments to hospitals for specialty drugs, and in the process, there may be a delay in patient care, attorneys say. Hospitals reportedly find white bagging thrust on them by Medicare Advantage plans and commercial payers in the middle of a contract year through amendments or policies, which means they won't be paid for oncology and other high-cost specialty drugs they prepare for patients on-site. Some hospitals have resigned themselves to white bagging and are making up lost revenue in other parts of their payer contracts, while others try to scrap the policies in future contracts or fight back in arbitration and court battles. They are getting some help from state lawmakers, and relief possibly could come from federal agencies that are poking around white bagging, according to attorneys.

"This is a cautionary tale in the importance of contract language," said attorney Jim Boswell, with King & Spalding. "Providers too often focus only on pricing and don't pay attention to amendments and the effect of policies and protocols and the ability to vary the contract through things that are called utilization management but are really substantial changes to the scope of the contract." Payers have set in motion white-bagging and other policies that affect reimbursement for imaging and surgery while contracts are already under way, Boswell said at a Dec. 9 webinar sponsored by his firm. "The imagination is limitless in terms of what these policies can be. I don't find that COVID has slowed down these policy rollouts."

White bagging was announced in 2020 and implemented across the country in phases, said attorney Zuzana Ikels, with King & Spalding. Some commercial payers require hospitals to buy specialty drugs from nonhospital suppliers on lists approved by the payers, Boswell said. Normally, hospitals have their own specialty pharmacies and prepare the drugs on-site. The main focus of white bagging is expensive drugs for treating some of the most serious diseases, such as cancer, multiple sclerosis and neurological illnesses, Ikels said. Hospitals are worried that shipments of drugs from outside pharmacies, which may be delayed, put patients at risk, the attorneys alleged.

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For example, in a provider bulletin on specialty pharmacy requirements for outpatient hospitals, UnitedHealthcare states that outpatient hospitals "source the specialty and oncology supportive care drugs listed on UHCprovider.com through an indicated specialty pharmacy."^[1] Cigna reiterated recently that it "will no longer reimburse facilities directly for the drugs included in the Specialty Medical Injectables with Reimbursement Restriction list, unless otherwise authorized by Cigna. Please note that facilities cannot bill patients with Cigna-administered coverage for the cost of these injectables when they are not obtained from a specialty pharmacy in the Cigna network."^[2]

About six months ago, Boswell said there was a new round of white bagging around oncology support medication, such as Neulasta. "We are representing a client challenging those in particular because the drugs are administered relatively close in time to chemotherapy and having to go through another process and pay another co-pay and have it shipped to the hospital is bothering people," he explained. For example, a United bulletin

states that “Starting with dates of service on June 7, 2021, outpatient hospitals must obtain certain oncology supportive care medications from the participating specialty pharmacies we indicate, except as otherwise authorized by us.”^[3]

Hospitals should push back on white bagging in some way, shape or form, whether they have conversations with payers, lay the groundwork to ban white bagging in subsequent contracts or go all the way with arbitration or a lawsuit, Boswell said. “The one thing you don’t want to do is nothing,” he said. “You don’t want to let policies roll by without any kind of response. Inaction could be construed as acquiescence.”

Boswell’s sense is that payers are willing to let hospitals provide the specialty drugs themselves, notwithstanding the white-bagging policies. “White bagging looks like a way to get a price reduction, and many hospitals have negotiated a way to continue to provide drugs themselves because it’s in the best interest of patients and promotes the most timely delivery of drugs without prior authorization delays,” he said.

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