

## **Decision on the Merits**

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### **RELEVANT CONTRACTUAL LANGUAGE**

The parties agreed to arbitrate pursuant to the following provision in their Medicare Pharmacy Benefit Insurance Agreement: “*All claims arising out of or relating to the Agreement, or the performance or breach thereof, shall be arbitrated in accordance with the Commercial Rules of the American Health Law Association.*”

### **CLAIMS ASSERTED**

Software commenced arbitration to recover the following claims:

- 1) unpaid pharmacy claims and administrative fees,
- 2) lost profits,
- 3) legal fees,
- 4) injury to business reputation, and
- 5) injunctive relief seeking to require Global to escrow certain funds that Software claims it was entitled to receive.

In response, Global asserted counterclaims for fraud and negligence and requested two audits: 1) a fraud, waste, and abuse audit and 2) a pharmacy benefit manager audit of Software.

### **BACKGROUND FACTS & PROCEDURE**

Global Primary Insurance (“Global”) is an insurance company involved in the sale of pharmacy benefit insurance policies, issued in accordance with Medicare Part D. Software Pharmacy Benefit Manager (“Software”) provides to insurers the pharmacy benefit management services that are required for the sale and administration of pharmacy benefit insurance. Software contracted with Global to provide such services (the “Agreement”).

CMS has requirements specifying when prior authorization (PA) is needed and also when high-cost edits (drugs whose costs exceed a certain dollar amount) are required. CMS discovered inaccuracies regarding PAs and high-cost edits and required Global to take corrective action. When CMS found that appropriate corrective action had not been taken, it terminated Global as a Part D participant, effectively ending this line of business.

Pursuant to the Agreement, Software was appointed Global's agent for the purpose of making payments to pharmacies, and was to then invoice Global for the amount of such payments. Global paid no invoices issued by Software subsequent to the CMS termination. Software commenced arbitration to recover unpaid pharmacy claims and administrative fees, lost profits, legal fees, injury to business reputation, and injunctive relief seeking to require Global to escrow certain funds that Software claims it was entitled to receive.

The Agreement gave Global the right to conduct a fraud, waste, and abuse audit and a pharmacy benefit manager audit of Software under certain circumstances. Global counterclaimed seeking to obtain both audits, and asserted a claim of fraud and negligence against Software, claiming that Software falsely represented information to Global, which Global in turn communicated to CMS. That information, claims Global, was the basis for the CMS decision to terminate Global's Part D participation.

### **PRIOR PRODEDURAL MATTERS**

Pursuant to this arbitrator's findings, Global's request for an audit was **GRANTED** in an Interim Order of March 1, 2021.

Software requested interim injunctive relief, including the escrow of certain funds it believes it was entitled to receive. Pursuant to this arbitrator's findings that request was **DENIED** in the Interim Order of March 1, 2021.

A hearing was held via Zoom on November 1-3, 2021.

### **RULING & ORDER**

Software is based in New York and claimed that New York Law applies. Global is based in Indianapolis and claimed that Indiana law applies. However, after the hearing was closed, the panel conducted its own research and determined that, based on where certain events occurred, Illinois law should apply to any state law issues.

Software's claims for unpaid pharmacy claims and administrative fees, lost profits, and injury to business reputation are hereby granted, and Global is hereby ordered to pay Software \$1,045,862, plus interest if payment is not made within 60 days after this Decision is issued. Global is also hereby directed to pay Software's legal fees within 60 after this Decision is issued.



Arbitrator

December 1, 2022