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Insights

Aetna Claims Victory in Four Year-Old Lawsuit Against Bay Area Surgical Management, LLC

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Aetna has claimed victory in a four year-old lawsuit against Bay Area Surgical Management, LLC, after a civil jury hit the California medical group with a $37.4 million dollar judgment.

The victory capped a month-long trial against 10 defendants, including surgical centers and the organization's three co-founders.

The trial began March 16 and ended April 13 with 11 of 12 members of the civil jury in Santa Clara County Superior Court agreeing with Aetna on six causes of action-fraud, intentional interference with contractual relations and unjust enrichment.

Aetna claimed that the surgical company violated California law by:

- Overcharging patients
- Paying physician-investors excessive amounts in exchange for investing in surgical facilities
- Submitting false/misleading claims to Aetna and failing to disclose the waiver of co-pays

Allegations in the suit stated that Aetna-affiliated doctors, with financial or ownership stakes in surgical facilities, violated state law and committed fraud when they directed patients to out-of-network surgical facilities in return for cash payments. Aetna further alleged that the waving of coinsurance payments and other financial obligations was used to entice patients to the centers, while inflated claims for services were submitted by the surgical centers.

Some examples of Bay Area Medical Group's inflated charges according to Aetna:

- $73,526 for a kidney stone fragmentation when an average in-network charge would have been approximately $7,612;
- $37,572 for a knee arthroscopy/ligament repair when an average in-network charge would have been approximately $10,500;
- $15,276 for bunion surgery when an average in-network charge would approximately be $7,943.

Aetna also accused the non-physician managers of "cherry-picking" patients after reviewing files and directing the referring physician-investors to schedule procedures at the group's facilities. In one alleged instance, a facility paid an Aetna participating doctor an annual bonus check for $980,000. The effect of these payments was that almost overnight, after investment, physicians changed their referral patterns from almost 85% of

referrals to in-network facilities to 85% of referrals to out-of-network facilities.

The Bay Area Medical Group and the surgical centers plan to appeal the decision. All facilities continue to operate. The defendants argue that Aetna is responsible for negotiating the price of services and failed to do so in this situation. In addition, they believe all physician disclosures were made to patients, who can legally choose to have services performed at a non-affiliated Aetna facilities. According to California law, once the physician-investors disclose their financial stake in a surgical facility, they can be paid for referrals to their own practice as long as those payments are proportional to the ownership interest.

Aetna has recently filed two lawsuits resembling this action against physician-owned surgery centers in Texas and Pennsylvania.

The case caption is: *Aetna Life Insurance Co. v. Bay Area Surgical Management LLC et al*., 1:12-cv-217943, in the Superior Court of California, County of Santa Clara.

This is not the only lawsuit of its kind that has been recently filed. We are seeing the beginning of more aggressive moves by payors to challenge out-of-network and other "out of the box" arrangements. If you have any questions regarding the compliance of your billing practices, please contact **Thomas N. Hutchinson**.