

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HEALTHPRO PHARMACY & WELLNESS
CENTER,

Plaintiff,
v.

OPTUM RX,

Defendant.

Case No. 3:24-cv-01878-G

**PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTIVE RELIEF PENDING ARBITRATION**

Expedited Consideration Requested – Relief Required Before July 25, 2024

Plaintiff HealthPro Pharmacy & Wellness Center (“HealthPro” or “Pharmacy”) files this emergency motion for temporary restraints and preliminary injunctive relief, pursuant to Rule 65 of the Federal Rules of Civil Procedure, to preserve the status quo pending mandatory arbitration of the parties’ underlying dispute.

This request for immediate injunctive relief is necessary because Defendant Optum Rx, a pharmacy benefit manager for health insurance plans, provided Plaintiff with *merely 10 days notice* that it would be terminated from Optum’s provider network, effective July 25, 2024. Optum’s short notice period, however, is prohibited by Texas law, which requires “reasonable” notice to HealthPro’s patients of any such action. See Tex. Ins. Code § 843.309 (requiring that “reasonable advance notice shall be given to an enrollee of the impending termination from the plan of a physician or provider who is currently treating the enrollee”). By way of example, when Optum served the Pharmacy with its notice of termination on November 8, 2023 (which the Pharmacy appealed via Optum’s internal process as required by the parties’ agreement), Optum

provided the Pharmacy with four months notice of termination. In short, 10 days' notice is not reasonable because it does not allow sufficient time for continuity of patient care.

In addition, Optum's termination is based on three alleged invalid claims totaling \$3,505.83, or approximately 0.2% of Plaintiff's business with Optum in 2023. After Plaintiff appealed from Optum's termination decision, Optum retaliated by accusing Plaintiff of submitting other, purportedly invalid claims amounting to approximately 3.8% of Plaintiff's business with Optum in 2023. Either way, Optum's audit findings are contrary to Texas law. For example, Optum invalidated numerous claims based on mail-order deliveries. Putting aside the waiver that Optum itself granted for the pandemic, Texas' PBM reform law expressly prohibits Optum from terminating the Pharmacy on this basis: a "pharmacy benefit manager may not as a condition of a contract with a pharmacist or pharmacy prohibit the pharmacist or pharmacy from: (1) mailing or delivering a drug to a patient on the patient's request." Tex. Ins. Code. § 1369.557.

Moreover, Optum's termination of the Pharmacy is pretextual—it is attempting to reverse claims or misappropriate those prescriptions for its own benefit. Notably, all of the alleged discrepant claims are for beneficiaries of United Healthcare's Medicare Advantage AARP plan, a corporate affiliate of Optum under the United Health Group insurance conglomerate. In addition, Optum has already transferred numerous of Plaintiff's patients and prescriptions, all of whom are also beneficiaries of its affiliate's insurance plan, to yet another corporate affiliate—Optum's internal mail-order pharmacy. In short, Optum's conduct violates Texas "patient steering" and numerous other laws, as noted in Plaintiff's memorandum of law and Verified Complaint.

Suffice it to say, Plaintiff should be permitted the opportunity to arbitrate its claims before it is eliminated as a going concern by Optum's misconduct. Throughout the time of the parties' dispute—which dates back nearly one year—Plaintiff has continued processing claims for patients enrolled in plans administered by Optum. Optum, on the other hand, has not paid the Pharmacy

one cent of the hundreds of thousands of dollars in reimbursement due to the Pharmacy on those claims. Optum’s unilateral withholding of the Pharmacy’s reimbursement not only violates federal and state “prompt pay” laws, it provides a compelling basis for why injunctive relief is critical here. Moreover, approximately 40% of the Pharmacy’s business is comprised of enrollees in plans administered by Optum, the loss of which—combined with the short-notice, patient steering, and withholding of reimbursement—will irreparably harm the Pharmacy, its goodwill, and community reputation. In contrast, no harm will befall Optum by injunctive relief because it has permitted Plaintiff to remain in network and serve beneficiaries throughout the pendency of the parties’ dispute resolution efforts.

Respectfully, although Plaintiff’s claims are meritorious in their own right, the Court should not be blind to the backdrop against which this action is brought, including the ongoing Congressional and Federal Trade Commission investigations of PBMs, the warnings by the Centers for Medicare & Medicaid Services against the elimination of independent pharmacies from networks, and PBM reform laws sweeping the Nation, including in Texas under Governor Abbott, all of which are aimed at precisely the conduct alleged here. Unfortunately, none of it may see the light of day in open court, either in this forum or elsewhere, because PBMs like Optum impose mandatory arbitration clauses on providers as a condition of admission to their networks, but Plaintiff simply asks that the status quo be preserved long enough to permit it the opportunity for arbitral relief.

Plaintiff refers the Court to its contemporaneously-filed Brief in Support and Appendix in Support of this Motion, and incorporates all arguments made therein.

Dated: July 23, 2024.

Respectfully submitted,

CUNNINGHAM SWAIM, LLP

/s/ Alex J. Whitman

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

The undersigned counsel for Plaintiff hereby certifies that pro hac vice counsel for Plaintiff conferred with counsel for Defendant, Heather Jackson, via telephone on July 11, via email on July 12, 2024, and provided a draft copy of the motion to Ms. Jackson via email on July 19, 2024. Ms. Jackson did not respond to Plaintiff's attempts to discuss further. This opposed Motion is thus submitted to the Court for its determination.

/s/ Alex J. Whitman

Alex J. Whitman

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Civil Procedure 5, the undersigned hereby certifies that all counsel of record are being served with a copy of this document via the Court's CM/ECF notification system by email on this 23rd day of July, 2024.

/s/ Alex J. Whitman

Alex J. Whitman