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Antitrust: Achilles' heel of radiology benefits management companies?

By Kate Madden Yee
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With the federal government trying to balance the budget and cracking down on medical imaging in its efforts to do so, insurance companies have been seeking ways to manage the use of imaging services. One solution that has appeared on the landscape is radiology benefits management (RBM) companies, firms that vet participating physicians' imaging requests for prior authorization before allowing coverage.

But the RBM concept doesn't sound like such a good idea to doctors and equipment vendors, who question whether a third party can really make these kinds of judgment calls. And a recent suit filed in the state of New York brings out another, potentially chilling issue: If the RBM is owned by radiologists, how does that affect a local market?

In May, Jericho Special Imaging (JSI) of New Hyde Park, NY, which caters to pediatric and other special needs patients, filed an antitrust suit against radiology benefits management firm CareCore National of Wappingers Falls, NY. CareCore contracts with Oxford, Aetna, HIP Health Plan of New York, and Health Net physician networks. The suit claims that CareCore is owned by competing radiologists in the area, and that it did not accept JSI into its network, despite repeated requests, effectively preventing JSI from serving the community.

CareCore was not available for comment.

"What makes this case unique is the claim that CareCore is owned by radiologists," said Thomas Greeson, a partner at Reed Smith of Falls Church, VA, who specializes in radiology-related regulatory matters. "This isn't just someone saying, 'I was excluded [from a market] and that violates antitrust laws.' "

Not just playground politics

Radiologist Dr. Allen Rothpearl opened JSI in 2006, expecting that it would be easy to be added to CareCore's list of providers.

"I thought we'd get right in, since they didn't have a center like ours on their rolls," he said.

According to Rothpearl, his requests were repeatedly denied. Last year, JSI wrote off each month between 15% and 29% of its CareCore private patient visits; during the first quarter of this year, the range was similar, from 16% to 26%.

Whether this case is the first of many remains unclear, according to Rothpearl's attorney, Lloyd Eisenberg of Eisenberg and Carton in Bellmore, NY. But the business model of an RBM owned by radiologists is vulnerable to antitrust allegations.

"A business model like this could get to a point where it would have significant impact on the practice of radiology," Eisenberg said. "CareCore has grown such that it can put centers out of business, and there's no reason why it can't expand to other states."

When competition is constricted, patients suffer, according to Matthew Cantor, partner at Constantine Cannon of New York

City and an expert in antitrust litigation.

"From a national standpoint, this structure not only harms competition, it harms the patients these doctors say they're trying to serve," Cantor said. "It's much better to have an environment where doctors compete against each other to offer the best care at the lowest price."

Big challenge

But even if the case goes to court, it could be an uphill battle for JSI because the courts have made it difficult for private entities to enforce antitrust laws, according to Greeson.

"In a suit like this, the plaintiff must prove that there's a generally adverse effect on competition," he said. "The court will look at whether patients benefit or not from the RBM making decisions for payors about who to contract with, rather than the impact on the excluded radiology group. That's where it's going to come down."

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