

ISSUE BRIEF:

DHA's Recoupment Action Against Compounding Pharmacies



In June 2020, hundreds of compounding pharmacies across the United States received letters from Express Scripts, Inc., stating on behalf of TRICARE and the Defense Health Agency that ESI was recouping money from the pharmacies for compound drug claims submitted to TRICARE back in 2015. The letters made clear that this was no ordinary clawback resulting from an audit of claims; rather, it was an enforcement action against pharmacies for what DHA had decided were fraudulent claims.

Recoupment amounts varied by pharmacy – from a few hundred dollars to hundreds of thousands of dollars. Recoupments on these compound claims began on or around the date of receipt of these letters; ESI simply began withholding funds from pharmacies' current reimbursements without any due process.

The letters alleged the compounders' reimbursements for the drugs dispensed were improper because of a lack of a physician-patient relationship (PPR) – in other words, alleging the physicians had no documented relationship with the patients for whom they'd written prescriptions for compounded medications (because there was no associated medical visit billed to TRICARE) – *a situation over which pharmacists and pharmacies have no control*. Each letter included a report that purported to set out the prescription number, fill date, Member ID number, and the discrepant dollar amounts to be recouped.

In late June, in response to concerns raised by our organizations, ESI and DHA issued a *temporary* suspension of recoupment actions and stayed the 90-day time period to submit information and documentation in support of a request for an administrative review until further notice. *They also said there is no plan to return any funds already recouped until the reassessment is completed.*

Then in late August, DHA indicated that they were renewing the recoupment effort and that compounding pharmacies would have 90 days from September 1 to appeal the recoupment and to demonstrate *medical necessity* for the dispensing of the TRICARE-covered prescriptions in question.

The rationale for this recoupment effort is unjustified, and the process followed by ESI in executing it is rife with errors and runs counter to the ESI contract with the compounding pharmacies and the provider manual for 2015. Moreover, ESI's decision not to return previously recouped funds risks creating a cash-flow crisis for many pharmacies that are already strained by the economic effects of the current pandemic.

ACTION REQUESTED: We ask members of Congress to contact DHA about this egregious accusation of fraud by compounding pharmacies and improper recoupment action and assert that DHA/ESI cannot hold pharmacies accountable for producing evidence or documentation to which they do not have access and are not required by law to document and produce.

CONTACT: APC's David Pore – dpore@hslawmail.com; or NCPA's Adam Harbison – adam.harbison@ncpanet.org