A state judge has denied Argus' motion for summary disposition of charges brought against it in a TDI enforcement action triggered by TPBC's referral of alleged transaction fee violations by the giant PBM.

Sarah G. Ramos, the administrative law judge overseeing the case, denied the PBM's motion in a Friday (Jan. 29) ruling that prominently cited the amicus curiae (friend of the court) brief that American Pharmacies submitted in September in support of the Texas Dept. of Insurance.

TDI brought an enforcement action against Argus four weeks after TPBC referred documented evidence to TDI in June of allegedly illegal transaction fees being charged by Argus. TDI initiated decisive legal action against the giant PBM to seek administrative penalties and revocation of its license to operate in Texas. A license revocation hearing was held Dec. 4 before the State Office of Administrative Hearings.

Argus aggressively contested TDI's charges and sought a Summary Disposition in the case, asserting that the provisions of SB 418 -- the 2003 law that prohibits the direct or indirect assessment of transaction fees by health plans in the Texas Insurance Code -- do not apply to PBMs.

In rebuffing Argus' argument, Judge Ramos cited the APRx brief: "Brief 1 asserts that PBMs operate exclusively under the health benefit plans to which Code §1213.005 applies, because PBMs would have no authority to manage claims without such plans. Moreover, Brief 1 claims that the term "indirectly" in §1213.005 would serve no purpose and its plain meaning would lead to an absurd result if PBMs were allowed to charge a fee for each transaction while the insurers were prohibited from doing so."

In concluding her ruling, the judge stated: "The ALJ denies the motion for summary disposition because Argus acted as an agent for insurers, was not exempt from the prohibition against collecting a fee for adjudicating claims, and collected those fees from pharmacies. Accordingly, the ALJ orders the parties to prepare for a hearing on the merits."
TPBC started aggressively pursuing the end of transaction fees more than two years ago, working closely with TDI officials to identify enforcement challenges and persuading Texas Health and Human Services Commission officials in 2013 to prohibit transaction fees in Medicaid managed care through new contract requirements.

TPBC’s SB 94 (Sen. Juan Hinojosa of McAllen), which greatly strengthened the ban on pharmacy transaction fees, was signed into law on May 15 and took effect on Sept. 1:

- It adds pharmacies to the list of health-care providers that cannot be assessed a transaction fee;
- It prohibits fees for network management services, inclusion in a network, services related to the adjudication of a claim, services for processing a claim, services related to transmitting a claim, or for developing a claims processing and adjudication network; and
- It gives Texas Dept. of Insurance stronger enforcement capabilities.

To better understand the regulatory landscape on transaction fees and where you can get assistance, please read and refer back to our comprehensive guide on the issue, What You Need to Know About the Transaction Fee Ban.

Many Texas pharmacy organizations report news about what is happening in advocacy.

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