

NEWS

Score one for David: Appeals court rules for pharmacies in fight with giant Optum Rx



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Key Points

The lawsuit emerged in the wake of a Ventura County dispute between independent pharmacists and Optum Rx.

A panel of appellate judges described Optum Rx's arbitration provisions as "unconscionable."

An appeals court ruled resoundingly Wednesday in favor of an Ojai pharmacy and 21 other independent drugstores that claim massive pharmacy benefit manager Optum Rx underpays medication reimbursements in an effort to push them out of existence.

A panel of judges in the 1st District Court of Appeal in San Francisco upheld an Alameda County Superior Court ruling denying Optum's bid to send the complaints made by mom and pop pharmacies in a lawsuit into legal arbitration. The decision paves the way for the pharmacists to take their allegations to a jury in an effort to recover past losses and ask for damages.

"Awesome," Chris Platt, the Ojai pharmacist who helped organize the lawsuit, said of the ruling in a text message. "David beat Goliath!!!!"

Pharmacy benefit managers negotiate reimbursement rates with pharmacy services administrative organizations that in turn contract with pharmacies. Optum Rx, headquartered in Irvine and part of UnitedHealthcare, is one of the largest managers in the nation with nearly \$100 billion in revenue last year. A spokesman did not respond to a question about whether the company will ask the California Supreme Court to consider reviewing the case. The court accepts about 3% of the requests filed with it.

Optum Rx officials have previously argued their pricing system and use of arbitration to settle reimbursement disputes with pharmacies are both fair.

But appellate judges called Optum's arbitration provision "unconscionable." They said terms are tilted in favor of Optum and are not signed, or agreed to, by the pharmacies.

"These procedures allow Optum Rx to unilaterally change arbitration terms, deny the pharmacies remedies that are available to Optum Rx, impose high arbitration costs on the pharmacies and severely limit the pharmacies' ability to engage in discovery," the judges wrote.

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Mark Cuker, the Philadelphia lawyer representing the independent pharmacies, said the decision means the lawsuit will return to superior court. It also opens the door to discovery where pharmacists can ask the court to force Optum to provide documents revealing its pricing system. The independents claim they are reimbursed at far lower rates than large chains and mail-order pharmacies.

As part of a long list of accusations, pharmacists have said they are not privy to the contract between Optum Rx and pharmacy service administrative organizations through its terms dictate reimbursement rates. They allege Optum takes confidential information about patients from the pharmacies and provides it to its own mail-order medication division in an effort to push the mom and pop stores out of business.

Optum Rx said in January the allegations are "without merit."

Opening the door

Cuker said the ruling opens a courtroom door for other pharmacies that contend they've been underpaid and mistreated by large pharmacy benefit managers.

"We intend to bring more lawsuits against Optum," he said.

But the appellate court decision is unpublished, meaning it does not set binding legal precedent. Cuker said judges can still consider the ruling but are not compelled to follow it. He said he planned to ask the appellate court to reconsider publishing the ruling.

Even unpublished, the ruling is one of the most significant made against a pharmacy benefit manager, Cuker said.

“It really sends a message that they’re not going to let these mega-Goliath corporations crush the little guy,” he said.

The court battle emerged from a 2017 dispute in Ventura when Optum Rx served as pharmacy benefit manager for Gold Coast Health Plan. The plan administers Medi-Cal insurance for nearly 250,000 low-income county residents.

Platt, co-owner of Medical Arts Pharmacy in Ojai, and other pharmacists complained Optum Rx was paying them at rates so low pharmacies were forced to close. Platt contacted Cuker, who was involved in other lawsuits against Optum, and then helped round up other pharmacies around California. Teaming the complaints together, they filed their lawsuit in Alameda County.

Platt said his pharmacy and others will not only demand compensation for underpaid claims but will also seek millions in punitive damages. He said the ruling ends the ability of Optum Rx to keep information to itself.

”Now, we get to audit them,” he said.

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