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Pharmacy Benefit Melee: Anthem vs Express Scripts Suit Hinges On Benchmark Pricing

By Brenda Sandburg

ANTHEM WANTS OUT OF CONTRACT – perhaps just to bring operations in-house.

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Anthem Inc. is moving to end its contract with **Express Scripts Holding Co.** in a suit alleging the pharmacy benefit manager's pricing of its services was far beyond competitive benchmark pricing.

The insurer filed suit against Express Scripts on March 21 to recover approximately $15bn in damages and obtain a declaratory judgment that it can terminate the agreement. Anthem has been engaged in repricing negotiations with Express for the past year and some analysts said the suit was not surprising.

> **Anthem's lawsuit is "symptomatic of growing rifts between PBMs and their customers," Real Endpoints' Roger Longman says.**

Express Scripts is the exclusive provider of PBM services for health insurance plans administered or insured by Anthem's affiliated health plans under a 10-year contract that extends through 2019. The complaint says the contract provides for periodic repricing – the time period is redacted – to ensure Anthem is receiving competitive benchmark pricing.

"ESI's current pricing to Anthem over the remaining term of the agreement now exceeds competitive benchmark pricing by approximately $13 billion, plus an additional approximately $1.8 billion through the post-termination transition period," the complaint states.

This pricing breach "has resulted in massive damages to Anthem and an obscene profit windfall to ESI," the complaint asserts. Anthem's pricing figures are based on a market analysis by the consultant Health Strategy LLC.

Express Scripts said in a statement that it believes Anthem's suit is without merit. "Express Scripts has consistently acted in good faith and in accordance with the terms of its agreement with Anthem," the PBM stated.

Anthem is Express Scripts' biggest client, representing 16.3% of 2015's revenues (which totaled $101.8bn), up from 14.0% of 2014's revenues (which totaled $100.9bn). The Department of Defense is Express Scripts' second largest client, accounting for 13.1% of revenue in 2015 and 11.9% in 2014.

PBM Model Under Threat

Roger Longman, CEO of Real Endpoints, a health care analytics company that focuses on pharmaceutical reimbursement, said Anthem's lawsuit is "symptomatic of growing rifts between PBMs and their customers."

"Payers and plan sponsors like employers are increasingly concerned or skeptical that they are getting all the benefits they thought they would be getting from PBMS," he said. "The more PBMs make money from pharmaceutical companies, the more mistrust payers and sponsors have of PBMs."

Some employers have also begun efforts to reexamine their relationships with PBMs, and the sector's reputation is in such a state that its trade group, the Pharmaceutical Care Management Association, has launched an advertising campaign to improve its image *(see related story, (Also see "'That's What PBMs Do' Tagline Aims To Inspire Support In Drug Pricing Debate" - Pink Sheet, 21 Mar, 2016.).*

Anthem May Take PBM Services In-house

Some analysts expect Anthem will take the PBM services in-house once its acquisition of **Cigna Corp.** closes, which is expected in the second half of 2016. Cigna has an in-house PBM that manages its formularies.

At the time the acquisition was announced, Anthem CEO Joseph Swedish commented that Anthem was examining its "optionality vis-à-vis" its contract with Express Scripts in the wake of its combination with Cigna *(Also see "Express Scripts Could Broaden Formulary Reach With Anthem-Cigna Merger" - Pink Sheet, 24 Jul, 2015.)*.

Ironically, Anthem and Express Scripts entered into their contract seven years ago when the PBM acquired Anthem's previous in-house pharmacy benefit management unit, which was then known as WellPoint *(Also see "Express Scripts Purchase Deal For NextRx Includes 10-Year PBM Contract With WellPoint" - Pink Sheet, 13 Apr, 2009.)*.

Leerink analysts said in a note that they believe "the odds are fairly high" that the two will go their separate ways after 2019, and possible sooner. They said the suit is an indicator that Anthem hopes to bring the business in-house.

Morningstar Equity Research analyst Vishnu Lekraj said he believes an agreement will eventually be reached between the two parties since Anthem's alternative PBM vendor choices are limited.

"We believe the increased hostility of the negotiations is a reflection of issues beyond the current business dynamics of the partnership, and these personal issues have hindered a mutually beneficial outcome," Lekraj stated in a note.

As for the $3bn in annual savings Anthem asks to receive, Leerink analysts said they estimate that this figure is too large and that a price recheck would likely represent an approximately $500m unfavorable impact to Express Scripts.

ESI's Medicare Part D Function Unsatisfactory, Anthem Says

In addition to the pricing breach, Anthem claims a breach in Express Scripts' operational performance. The complaint alleges the company did not carry out its material operational duties in a "prudent and expert manner" required under the contract due to "systems defects, chronic failure to devote sufficient resources to the work, inadequate training of ESI's personnel, inordinately high employee turnover, and lack of required expertise." It claims additional damages for this breach in an amount not less than $150m.

Also, "ESI seeks to compete unfairly against Anthem by continuing to charge inflated prices to Anthem, which allows ESI to undercut Anthem's prices when competing for ASO [administrative services only] employer group business and Medicare Part D prescription plans," the complaint says.

The complaint asks the court to rule that it can terminate the agreement and that Express Scripts is required to provide post-termination services for one year following any termination. However, Anthem said in a release that it "has not made any decision whether to end its contract with Express Scripts at this time."

According to the suit, the agreement allows either party to terminate the agreement if the other fails to comply with a material term and the failure is not cured within a certain time period, which was redacted from the complaint.

The insurer says the right to termination applies since Express Scripts' performance of Medicare Part D functions has been unsatisfactory.

The compliant details the negotiations that have taken place over the past year. It says Anthem proposed to pay Express Scripts $3.4bn in excess of competitive benchmark pricing, plus additional amounts during the post-termination transition period, but that Express Scripts maintained its proposal for pricing that was $12bn in excess of competitive benchmark pricing, plus more than another $1bn for the post-termination transition period.

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