

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

THE CHICKASAW NATION,

Plaintiff,

v.

1. CVS CAREMARK, LLC;
2. CAREMARK PHC, LLC;
3. CAREMARK PCS HEALTH, LLC;
4. CAREMARK, LLC;
5. CAREMARK RX, LLC;
6. AETNA, INC.;
7. AETNA HEALTH, INC.;
8. OPTUMRX, INC.;
9. OPTUM, INC.;
10. UNITED HEALTHCARE SERVICES,
INC.; and
11. UNITEDHEALTH GROUP, INC.

Defendants.

Civil Action No. 20-CV-488-KEW

COMPLAINT

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	PARTIES	6
A.	The Chickasaw Nation (Plaintiff)	6
B.	CVS Defendants.....	7
C.	Optum Defendants	11
III.	JURISDICTION AND VENUE	13
IV.	LEGAL FRAMEWORK	14
A.	Indian Health Service Provides Funding for the Nation’s Healthcare.....	14
B.	The IHCIA Authorizes the Nation to Recoup from Third Parties the Cost of Services Provided to the Nation’s Members	17
V.	FACTUAL ALLEGATIONS	18
A.	Defendants Profit from PBM Services at the Expense of Patient Care	19
B.	The Nation Operates ITU Pharmacies, Which Are Federally Exempt from Defendants’ Schemes	22
1.	The Nation Is Entitled to Recoup Service Costs from Defendants under the Recovery Act	24
2.	Defendants Are Subject to the Recovery Act	25
C.	Defendants Violate the Recovery Act.....	25
D.	Defendants Leverage Discount Programs to Unlawfully Hinder the Nation’s Recoupment Benefit.....	27
1.	Discount Programs Create Significant Profit for PBMs	27
2.	ITU Pharmacies Traditionally Ignored Discount Programs	29
3.	Defendants Inextricably Integrated Their Discount Program Information into Members’ Insurance Information	29

4.	Defendants’ Integrated Discount Program Information Forces the Nation to Either Pay or Forgo Recovery under the Recovery Act	30
E.	Defendants Continually and Intentionally Refuse to Repay the Nation	34
F.	Defendants’ Conduct Impairs the Quality of the Nation’s Healthcare Program.....	35
VI.	COUNTS.....	36
VII.	PRAYER FOR RELIEF	41
VIII.	JURY DEMAND.....	42

I. INTRODUCTION

1. This case arises under federal laws¹ guaranteeing Native Americans access to healthcare. With the support of these laws, Plaintiff the Chickasaw Nation (the “Nation”) has established a robust and sophisticated healthcare system, which includes several ITU Pharmacies² throughout the territory of the Chickasaw Nation. The Nation’s ITU Pharmacies provide services to members of federally recognized Native American nations (“Members”), including many citizens of Oklahoma.

2. Pursuant to federal law, Members are eligible to receive health care (including pharmacy services) at the Nation’s facilities at no charge. The Member pays no co-pay or other fees for healthcare services, including prescription medications he or she receives from the Nation’s ITU Pharmacies. However, the ITU Pharmacy must still pay for the costs of the medications it dispenses to Members. To offset these costs, the Nation has the right to recoup the costs of covered services the Nation provides to a Member from any applicable insurance coverage the Member may have. The Nation therefore enjoys the status of a “payor of last resort.” Clear, unambiguous federal laws guarantee this right.

3. Defendants ignore these laws. Defendants make up two of the largest vertically integrated pharmacy conglomerates in the U.S. They consist of captive Pharmacy Benefit

¹ 25 U.S.C. § 1621, *et seq.*; see Section IV—“Legal Framework”, *infra*.

² “ITU Pharmacies” are those pharmacies operated by Indian Health Service (“IHS”), an Indian tribe or tribal organization, or an urban Indian organization, all of which are defined in Section 4 of the Indian Health Care Improvement Act (“IHCA”), 25 U.S.C. 1603. The Nation’s pharmacies are ITU Pharmacies.

When a Member of any Nation visits an ITU Pharmacy (whether run by that Member’s respective nation or another nation), that Member receives services for no charge, and that ITU Pharmacy has a 25 U.S.C. § 1621e right of recoupment against the Member’s insurer (if the Member has coverage).

Managers (“PBMs”), along with large health insurance plans and networks. They provide and manage many of the insurance programs covering Members. The CVS Defendants³ allocate a significant portion of their management services to (and derive a complementary proportion of revenue from) their captive pharmacy benefits plan under the subsidiary, Defendant Aetna. Similarly, the Optum Defendants⁴ allocate a significant portion of their management services to (and derive a complementary proportion of revenue from) the pharmacy benefit plans of the Optum parent company—Defendant United Health Group. Of course, these relationships make up a respectively predominant portion of each of the CVS and United Health Group conglomerate’s revenue stream and allow Defendants to exert significant and substantial control over the pharmacy market.

4. In approximately 2015, the Nation’s ITU Pharmacies began experiencing numerous and unprecedented claim denials. These denials emanated from Defendants’ various PBM entities on behalf of the respective health benefits plans they managed (predominantly, Aetna and United Health Group plans). Defendants began denying claims—claims for covered drugs, for which the Nation had previously submitted and received reimbursement without issue—for reasons that have no applicability whatsoever to ITU Pharmacies. These denials were based on Defendants’ retail pharmacy rules from which the Nation is exempt.⁵ These claim denials violate specific provisions

³ The “CVS Defendants” are Defendants CVS Caremark, LLC; Caremark PHC, LLC; CaremarkPCS Health, L.L.C.; Caremark, L.L.C.; Caremark Rx, L.L.C.; Aetna, Inc.; and Aetna Health, Inc. *See* Section II—Parties, *infra*.

⁴ The “Optum Defendants” are OptumRx, Inc.; OptumRx Holdings, LLC; Optum, Inc.; UnitedHealth Group, Inc.; and United Healthcare Services, Inc. *See* Section II—Parties, *infra*.

⁵ *See* Section V.B., *infra*. These unlawful denials were based on many of Defendants’ retail pharmacy rules, which are wholly inapplicable to ITU Pharmacies. These rules include but are not limited to requirements that (a) patients use a specialty pharmacy to fill certain prescriptions; (b) patients visit an in-network pharmacy; or (c) patients use a mail-order pharmacy. While these

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.