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## In Mid-Contract Change, Payers Deny Certain Specialty Drug Payments

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By Nina Youngstrom

With the stroke of a pen, some commercial payers are now denying payments for specialty drugs unless hospitals buy them from certain pharmacies, a development that's not sitting well with hospitals for financial and patient-care reasons, attorneys say. The so-called white-bagging policies are positioned as "amendments" or "expansions" to contracts, but attorneys said they are unilateral changes to terms in the middle of a contract, and hospitals have grounds to fight them.

Commercial payers are carving out high-cost drugs midway through negotiated contracts and requiring hospitals to buy them from nonhospital suppliers on lists approved by the payers, said attorney Jim Boswell, with King & Spalding in Atlanta, Georgia, at a Nov. 11 webinar sponsored by the firm. "For some providers, it's millions of dollars a year because it's taking a category of items that had been under the contract and that were going to be paid at the negotiated price above cost and moving it out of the contract entirely," he said.

A few examples:

- In August, Cigna announced<sup>[1]</sup> that "Per our Specialty Medical Injectables with Reimbursement Restriction guidelines, certain specialty medical injectables administered in the outpatient setting must be dispensed and their claims must be submitted by a specialty pharmacy with which Cigna has a reimbursement arrangement. We will not reimburse facilities that purchase these injectables directly from specialty pharmacies, manufacturers, or wholesalers. The Specialty Medical Injectables with Reimbursement Restriction list only applies to providers who bill Cigna using a hospital fee schedule; it does not apply to those who bill Cigna using their own physician fee schedules."
- Effective Oct. 1 (delayed from April 1), UnitedHealthcare<sup>[2]</sup> said, "We are expanding our existing specialty pharmacy requirements such that hospitals will be required to obtain certain specialty medications from the specialty pharmacies listed in the table below, unless otherwise authorized by us....In the event a hospital does not obtain the specialty medication through the specialty pharmacy listed below, UnitedHealthcare will issue a denial of payment for the medication for failure to follow the protocol. Hospitals may not bill members for medication that is denied for failure to follow the protocol."
- Anthem Blue Cross in California said, "Providers will be required to obtain specialty pharmacy medications administered in the office or outpatient hospital setting through CVS Specialty effective July 1, 2020."<sup>[3]</sup>

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