

December 3, 2014

Ninth Circuit Rules Assignee Health Care Providers May Sue Health Plans Under ERISA for Payment of Benefits

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In an opinion with mixed implications for both insurers and health care providers, the U.S. Court of Appeals for the Ninth Circuit recently ruled that when plan beneficiaries assign their claims for payment of benefits to their health care provider, the provider has standing to sue the health plan under ERISA. Importantly, however, the court also held in *Spinedex Physical Therapy v. United Healthcare of Arizona, Inc.* No. 12-17604, 2014 U.S. App. LEXIS 21132 (9th Cir. Nov. 5, 2014) that anti-assignment provisions in health plans are enforceable. Additionally, the court held that, as written, the assignments only encompassed claims for benefits, not for breach of fiduciary duty.

Background

Spinedex Physical Therapy (the clinic) is a chiropractic physical therapy clinic. The clinic's patients signed an "Authorization of Representation" form that assigned to the clinic the patients' rights and benefits under their respective health plans and stated that the clinic was authorized to represent patients in legal proceedings that might be necessary to pursue payment of benefits under their health insurance plans.

The defendants are United Healthcare (United) and 44 health plans governed by ERISA for which United Healthcare is the claims administrator (the Plans). Under the Plans, for out-of-network care, Plan beneficiaries were required to request payment from their respective Plans. Almost all of the Plans allowed written assignment of claims for services rendered by non-network providers, without requiring the consent of the Plans for the assignment. This allowed the non-network provider to be paid directly by the Plan, instead of the Plan paying the patient, who would then have to reimburse the provider.

After treating patients covered by the Plans, the clinic submitted claims to United, some of which were denied in whole or part. The clinic did not seek payment from its patients for denied claims, even though it had the right to do so. The clinic sued United and the Plans alleging improper denial of benefits, and sued United alleging breach of fiduciary duty. The United States District Court for the District of Arizona granted summary judgment for the defendants, and the clinic appealed.

Health Care Provider Has Article III Standing to Sue for Validly Assigned Claims

Reversing the district court, the Ninth Circuit found that the clinic, as an assignee of its patients' claims for payment of benefits, has Article III standing to bring those claims. In so holding, the Ninth Circuit joined the Eleventh Circuit, the only other federal court to directly address this issue. *HCA Health Services of Georgia, Inc.*, 240 F.3d 982 (11th Cir. 2001). The Ninth Circuit noted that the clinic's patients would have had standing under ERISA and Article III to bring suit on their own behalf, and they have a right under ERISA to assign their claims for payment of benefits. In addition, the terms of most Plans explicitly allowed beneficiaries to assign their claims for payment of benefits to non-network providers that have rendered health care services. Following this logic, the Ninth Circuit concluded that non-network providers have the right to stand in the shoes of the patients who assigned their claims and sue under ERISA for payment of the assigned claims.

The defendants' main argument against standing was that because the clinic did not seek recovery from the patients themselves, the patients themselves never paid anything, and therefore the patients suffered no injury. Since the clinic stood in the shoes of patients who suffered no "injury in fact" themselves, the defendants asserted that Article III standing was lacking. Rejecting this argument, the court held that the patients' injury in fact *after* the assignment is irrelevant. Properly analyzed at the time of assignment, Plan beneficiaries had the legal right to seek payment directly from the Plans for charges by non-network health care providers, and if payment had been refused, to bring suit for a denial of benefits. The fact that the clinic chose not to seek payment from its assignors did not affect the clinic's right to recover benefits under the Plans from the defendants.

Patients Did Not Assign Claims for Breach of Fiduciary Duty

Although the clinic could bring suit for denied benefits, the Ninth Circuit held that the scope of the patients' assignment did not encompass claims for breach of fiduciary duty. The court found that language stating, "this is a direct assignment of my rights and benefits under this policy," with no specific reference to breach of fiduciary duty claims, was insufficient to demonstrate that patients intended to assign their rights to bring suit for breach of fiduciary duty. Therefore, the court dismissed the clinic's claims for breach of fiduciary duty.

Plan's Anti-Assignment Provision Is Enforceable

One Plan sued by the clinic contained an anti-assignment provision prohibiting Plan beneficiaries from assigning their benefits under the Plan to non-network providers without the Plan's consent. The Plan language also provided that the claims administrator (United) could, in its discretion, pay a non-network provider directly for services rendered to the beneficiary. The Ninth Circuit held that the anti-assignment provision was enforceable and, therefore, those patients' assignments of rights to the clinic were invalid.

Improperly Disclosed Limitations Periods Unenforceable

Two of the Plans being sued contained two-year statutes of limitations, and those Plans argued that claims against them were time-barred. The court disagreed, finding that because the Plans failed to properly disclose their limitations period in the summary plan descriptions (SPDs), they were unenforceable. This, according to the Ninth Circuit, violated Department of Labor regulations requiring that the limitations period be stated either "in close conjunction with the description or summary of benefits" or to note the page on which the limitations period was listed "adjacent to the benefit description." 29 C.F.R. § 2520.102-2(b).

Recommendations for Employers

Employers with ERISA-covered health plans should review their plan language regarding assignments. If assignment is permitted, employers should consider whether to change their plan language to prohibit assignment without written permission from the Plan.

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