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## Third Circuit, Breaking New Ground, Revives Suit Against Aetna

By Charles Toutant

A patient's assignment to his health-care provider of the payment of insurance benefits, even without direct reference to the right to sue, is sufficient to grant the provider standing to sue for those benefits, the U.S. Court of Appeals for the Third Circuit has ruled in a precedential decision.

Assignment of the right to payment allows doctors to treat patients without demanding they prove their ability to pay up front, giving patients better access to health care, the appeals court said in *North Jersey Brain & Spine Center v. Aetna*.

Aetna Inc. claimed that assignment must explicitly include the right to bring a legal claim if a provider is to file suit. But the appeals court said the interests of patients would not be furthered by drawing a distinction between a patient's assignment of the right and the medical provider's ability to sue to enforce that right.

The ruling reverses a district court's dismissal of a complaint by North Jersey Brain & Spine Center (NJBSC) on behalf of three patients who were enrolled in health plans run by Aetna. After treatment was rendered, Aetna allegedly underpaid or refused to pay claims for each of the patients.

U.S. District Senior Judge William Martini of the District of New Jersey dismissed the case based on the patients' failure to authorize the health-care provider to file lawsuits. In his ruling and his order permitting an interlocutory appeal, Martini acknowledged that the district was split on the question of whether assignment of payments was sufficient to confer standing.

On appeal, Aetna argued that the issue was resolved in a 2005 Third Circuit ruling, *Community Medical Center v. Local 464A UFCW Welfare Reimbursement Plan*, which recognized a distinction

between assignment of benefits and an assignment of a legal claim to those benefits.

But Third Circuit Judge Michael Chagares, joined by Judges Thomas Hardiman and Patty Shwartz, said that case was nonprecedential and made the distinction in dicta.

Meanwhile, NJBSC maintained that a 2014 Third Circuit case, *CardioNet v. Cigna Health*, held that a provider with derivative standing may assert whatever rights the assignor possessed. But the panel in *North Jersey Brain & Spine* said the assignment in that case included all rights under the Employee Retirement Income Security Act along with any other rights the patient has under federal or state law relating to reimbursement of coverage, while the assignment in the present case does not contain such limitless language.

Five other courts of appeals have considered the same question, and all have concluded that assignment of benefits is sufficient to confer standing to sue under ERISA, Chagares wrote.

The ruling "pragmatically recognizes that when a dispute arises regarding insurance coverage for health-care treatment, it is the doctor that is in the best position, both professionally and financially, to challenge that insurance decision, not the patient," Eric Katz of Mazie Slater Katz & Freeman in Roseland, who represented the plaintiff, said in a statement.

The ruling allows patients to seek treatment from the doctor of their choosing, without the burden of worrying how they would pay in advance for health-care services, Katz said, citing cancer patients as particularly vulnerable.

"Had the court ruled otherwise today, that same patient would likely have to front thousands if not tens of thousands of dollars for the treatment with only a shallow hope that somehow the patient could be reimbursed down the road."

Katz added in an interview that "as long as ERISA applies to coverage disputes, the insurance companies are always looking for some quirk or some loophole that would enable them to avoid addressing the merits" of a claim. Recently, attacks on the language of assignments have been a "burgeoning area," he said. But the Third Circuit ruling "makes it really clear, there are no magic words at all."

Edward Wardell of Connell Foley in Cherry Hill, who represented Aetna, declined to comment on the ruling. ■

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