

HOW ARE YOUR ASSIGNMENT OF BENEFITS CLAUSES DRAFTED? RECENT THIRD CIRCUIT DECISION HIGHLIGHTS THE IMPORTANCE OF REVIEW OF PROVIDER ASSIGNMENT CLAUSES

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Healthcare providers virtually always rely upon assignment of benefits agreements executed by patients as a basis for reimbursement from health insurers. When those insurers fail to reimburse the provider altogether, or fail to make complete payment for services rendered, the assignment agreement also serves as the basis for the provider to obtain derivative standing to sue the insurer for benefits due under the Employee Retirement Income Security Act of 1974 ("ERISA"), the federal law that has become the vehicle of choice for pursuing such claims. As a result, assignments of benefits — and, more specifically, the types of assignments that are sufficient to confer standing on the provider — have become a subject of litigation in the area of ERISA payor-provider disputes.

The September 11, 2015 opinion by the United States Court of Appeals for the Third Circuit in *North Jersey Brain & Spine Center v. Aetna, Inc.*, No. 14-2101, provides an example of such a dispute and underscores the importance of careful drafting of assignments to potentially avoid expensive litigation on whether the assignment is sufficient to confer standing on the healthcare provider to sue for payment under ERISA.

The case arose from an action for unpaid insurance benefits under ERISA brought by North Jersey Brain & Spine Center ("NJBSC"), a neurosurgical medical practice located in Bergen County, New Jersey which treated patients who were members of ERISA-governed healthcare plans administered by Aetna, Inc. ("Aetna"). After Aetna underpaid or refused to pay the claims which NJBSC submitted for services rendered, NJBSC filed suit against Aetna for non-payment of benefits under Section 502(a) of ERISA, relying on the patient-executed assignment of benefits, which, in relevant part, authorized NJBSC to "appeal to [the patient's] insurance company on [his/her] behalf" and assigned to NJBSC "all payments for medical services rendered" to the patients. The assignment language did not expressly assign to NJBSC the right to enforce the patients' rights to benefits.

In March 2014, the United States District Court for the District of New Jersey dismissed NJBSC's complaint, holding that the assignments at issue did not give NJBSC standing to sue under ERISA. NJBSC appealed, and the Third Circuit ultimately reversed, holding that the assignments were sufficient to confer derivative standing on NJBSC.

Noting that ERISA itself is silent on the issue of derivative standing, assignments, and the types of assignments that are sufficient to confer derivative standing, the Third Circuit looked to the legislative history and purpose of ERISA, common sense and the practical implications that affirming the district court's decision would

yield. Specifically, recognizing that "[a]n assignment of the right to payment logically entails the right to sue for non-payment," the Court held that "when a patient assigns payment of insurance benefits to a healthcare provider, that provider gains standing to sue for that payment under ERISA § 502(a)," thereby rejecting Aetna's argument that an assignment must explicitly include not just the right to payment but also the patient's legal claim to that payment if a provider is to file suit. The Court further noted that "[t]he value of such assignments lies in the fact that providers, confident in their right to reimbursement and ability to enforce that right against insurers, can treat patients without demanding that they prove their ability to pay upfront. Patients increase their access to healthcare and transfer responsibility for litigating unpaid claims to the provider, which will ordinarily be better positioned to pursue those claims. These advantages would be lost if an assignment of payment of benefits did not implicitly confer standing to sue."

In finding that the assignments at issue conferred standing, the Third Circuit joins other Courts of Appeal and district courts that have considered the issue. The decision also paves the way for healthcare providers in the Circuit to bring claims under ERISA derivatively based on assignments of benefits executed in their favor. As noted, however, the case also highlights that the careful drafting of assignment provisions may preclude insurers from asserting preliminary defenses and arguments relating to whether the assignment is sufficient to confer standing on the healthcare provider under ERISA. Prudent providers may want to have experienced health counsel review their assignment of benefits language on their patient intake forms.

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