Health Care Providers Should Review Assignment of Benefit Forms After 9th Cir. Decision

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PROVIDERS SHOULD REVIEW THEIR ASSIGNMENTS OF BENEFITS IN LIGHT OF THE NINTH CIRCUIT’S OPINION, PARTICULARLY IF THE PROVIDER USED A TEMPLATE PROVISION THAT HAS NOT BEEN REVIEWED IN SEVERAL YEARS.

A federal appeals court recently brushed aside the claims of several health care providers, in large part because of the language in the assignment forms signed by their patients. The opinion from the U.S. Court of Appeals for the Ninth Circuit should remind providers that they must have well-crafted patient assignment clauses to give them standing to bring a broad range of ERISA claims. Although the plan participants had signed assignment of benefit forms, the court found that the providers lacked standing to bring suit in federal court under the Act’s civil enforcement provisions.
In light of the decision, health care providers should:

- Review their patient assignment of benefits forms carefully, consulting with counsel.
- Ensure the forms encompass all potential rights under ERISA that the provider may need to protect itself.

**Overview of the Case**

The Ninth Circuit reviewed district court dismissals in two separate cases: *DB Healthcare v. Blue Cross Blue Shield of Arizona* and *Advanced Women’s Health Center v. Anthem Blue Cross Life & Health Insurance Co.* Both cases involved reimbursement disputes between providers and health benefit plan administrators, which culminated in the providers suing in federal court for declaratory, injunctive and monetary relief under ERISA. In both cases, the Ninth Circuit said neither ERISA, nor any written assignment, authorized the providers to make a claim under the statute for the relief they sought.

The Ninth Circuit first addressed the argument that the providers were beneficiaries entitled to directly bring civil enforcement actions under ERISA. The court rejected this argument summarily. It agreed with many other circuits that health care providers are not beneficiaries for ERISA purposes and cannot directly bring ERISA actions. The court stated, “We have held before, and reiterate now, that health care providers are not beneficiaries within the meaning of ERISA’s enforcement provisions.”

With greater implications for providers, the court also addressed the providers’ derivative authority to bring the claims based on the patients’ assignment of benefits. In both cases, the court said the providers did not have derivative authority to sue.

**Implications for Health Care Providers**

The Ninth Circuit’s holding highlights the importance of a well-crafted assignment provision encompassing a range of claims. All too often providers develop a basic assignment of benefits template. And when they do not revisit it for many years, they leave themselves vulnerable to attack in reimbursement disputes because the template has not kept pace with the changing legal and business landscape. Providers should review their assignment of benefits forms regularly and carefully to ensure they are casting a broad net.
Providers can glean specific guidance on what not to do by looking at the Ninth Circuit’s analysis of the providers’ assignment provisions in this case.

The *DB Healthcare* providers lacked standing because the governing benefit plans contained non-assignment clauses that overrode any purported assignments. The Ninth Circuit had little difficulty enforcing these non-assignment clauses. If an assignment of benefits is blocked by a self-funded plan’s anti-assignment clause, the provider may be forced to pursue the patient directly for payment. The patient will then be responsible for seeking reimbursement from the employee benefit plan.

In *Advanced Women’s Health*, the provider also lacked standing, but because of limitations contained in its assignment language. The plans did not preclude assignment, but the assignment clauses were not drafted broadly enough to encompass the claims asserted. The assignment clause simply provided: “I hereby authorize my insurance benefits to be paid directly to the physician.”

The Ninth Circuit acknowledged the validity of this provision, despite the fact that it did not use the terms “assign” or “assignment,” saying “No words of art are required to constitute an assignment; any words that fairly indicate an intention to make the assignee owner of a claim are sufficient.” However, the court said the assignment provision was too limited to encompass claims for injunctive or declaratory relief.

The court explained that even assignment clauses containing *much broader* language, *(e.g., “this is a direct assignment of my rights and benefits under this policy”)* have still been held to be limited to a claim for *payment of benefits*, and not broader claims related to fiduciary duties in plan administration.

When the assignment language is much more limited (authorizing only “insurance benefits to be paid” to the provider), the assignment could encompass “at most, the right to payment of benefits and the associated right to sue for *non-payment.*” Absent any reference to broader rights, such an authorization does not include claims for declaratory and injunctive relief or for breach of fiduciary duty.

The court further held that the assignment did not protect providers from claims for monetary relief related to recoupment. Noting that “because a health care provider-assignee stands in the shoes of the beneficiary,” the provider’s standing to sue is only for benefits due to that patient *under the plan*. Recoupments did not constitute benefits due
under the plan, so a patient would not have a right to such relief. Thus, the patient could not validly assign such a claim to the provider.

Providers should review their assignments of benefits in light of the Ninth Circuit’s opinion, particularly if the provider used a template provision that has not been reviewed in several years. Even if there is specific language about “assigning rights and benefits,” providers should use this case as an example that seemingly broad language may not be broad enough to protect the provider’s rights.

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