

NO CLASS IN CLASS ACTION LITIGATION

By: Steven I. Kern, Esq.*

The American Medical Association finds itself in the middle of a case providing rare insight into the high stakes world of class action litigation. A fight between lawyers who represent the AMA and certain state medical societies, and other lawyers representing a group of private physicians, is jeopardizing efforts to resolve nationwide class action litigation against United Healthcare Group (UHG).

The fight appears to have developed after NY Attorney General Andrew Cuomo resolved a case against UHG related to its ownership and manipulation of the Ingenix database. Under the terms of that settlement UHG will pay the State of New York \$350 million, \$50 million of which will be used for the development of a new reimbursement rate calculation database. This new database will replace the Ingenix database currently used by several insurers, including UHG, that allegedly contains inaccurate data which results in the shortchanging of many insureds and their physicians – especially those obtaining out-of-network benefits. Cuomo alleged that health insurance companies, including Aetna and CIGNA, were reimbursing out-of-network services at lower than “usual and customary” rates based upon the inaccurate Ingenix data.

After the settlement with Cuomo, according to published reports, efforts accelerated to resolve the long-standing case against UHG, with lawyers representing the AMA and state medical societies pushing for a quick settlement, reportedly valued at \$350 million, of which up to \$87.5 million would be paid to the lawyers. Lawyers representing the private physician groups argue that the amount the AMA and state societies are willing to accept is woefully inadequate. The lawyers representing the private physician groups are demanding \$900 million to settle the case, claiming that UHG paid physicians \$3.3 billion less than the amounts doctors billed for out-of-network services. They also claim that the settlement the AMA is willing to accept does not provide for reforms achieved in a settlement reached with HealthNet last year, based on similar claims. If the AMA’s terms are ultimately accepted, and the HealthNet case proves to be a guide, most physicians will realize, at best, only a few hundred dollars from the settlement after attorneys fees.

In an apparent effort to escalate the dispute between the law firms, the AMA and state medical societies suddenly filing a lawsuit in Federal District Court in Newark, New Jersey against Cigna and Aetna, based upon their use of the Ingenix database. While this suit recently generated headlines around the country, the same claims have been pending against Aetna and Cigna for two years in a lawsuit brought by the same lawyers who represent the individual physician groups in the UHG litigation. This new suit appears to have been brought by the AMA’s lawyers simply to undermine the lawyers representing the individual physician groups in the hopes of obtaining a tactical advantage and pressure them into agreeing to the far lower settlement offer.

It is unclear how this new suit will provide any advantage, whatsoever, to physicians. It is more than doubtful that the courts will allow duplicative recoveries or “two bites at the apple.” The new suit may, however, result in increased legal fees for all of the attorneys involved in this legal

morass, all at the expense of the nation's physicians. However, with billions of dollars at issue, the stakes couldn't be much higher – certainly for the lawyers involved.

It remains to be seen whether any of this wrangling will increase the amount of dollars ultimately returned to physicians. Unfortunately, if history is a guide, most physicians will see little real money from any settlement. Stay tuned!

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