



Hooper, Lundy & Bookman Sues Aetna, Charging Illegal Retaliation Against Patients, Doctors, and Surgery Centers Over Out-of-Network Care

On July 3, 2012, Hooper, Lundy & Bookman, PC (HLB) filed a complaint against Aetna Health of California, on behalf of outpatient surgery centers, physician groups, individual physicians and patients, charging the health plan with illegally punishing contracted physicians for performing surgeries at out-of-network surgery centers.

The complaint charges that Aetna unlawfully attempts to prohibit Preferred Provider Organization (PPO) and Point-of-Service (POS) patients from using their out-of-network benefits, and penalizes its contracted physicians who refer patients to out-of-network surgery centers.

“Aetna members purchase PPO and POS insurance so that they can receive their care at out-of-network providers. However, when they attempt to do so, Aetna improperly retaliates against those members' physicians,” said lead attorney in the case, Daron Toooh. “Aetna should not be permitted to sell insurance policies to members of the public with the promise that they can receive their healthcare at providers of their choice, and then engage in tactics designed to prevent those members from using those benefits.”

The suit outlines alleged instances in which Aetna has threatened to terminate, and has actually terminated, contracts with physicians who refer patients to out-of-network providers. The suit also describes how Aetna pressures its members not to use their out-of-network benefits.

“It is up to patients and their physicians to decide where the surgeries are to be performed. California law prohibits insurance companies from interfering with medical decisions for fiscal reasons,” said Mr. Toooh. “And although this case specifically addresses Aetna's unlawful actions pertaining to California providers, this issue is national in scope.”

Claiming that Aetna is engaged in unfair business practices, false advertising, breach of contract, and intentional and negligent interference with health care providers, HLB is seeking restitution for patients and providers, an injunction requiring Aetna to cease from threatening physicians and patients, and punitive damages. In addition, HLB is also calling for a reinstatement of any provider agreements Aetna terminated for referral of members to out-of-network providers.

Unfair Business Practices

The complaint charges that Aetna has utilized unfair business practices by:

- Attempting to control, direct and participate in the selection of health facilities by PPO members.
- Failing to base determinations of whether or not to authorize health care services for members on “sound clinical practices,” and failing to ensure that medical decisions regarding members are unhindered by fiscal and administrative management.
- Engaging in fraudulent, misleading and deceptive advertising.

False Advertising

The complaint further charges that through its marketing and advertising, Aetna makes false and misleading statements regarding members’ rights to out-of-network benefits and the ability of members to access out-of-network providers and facilities.

Breach of Contract

The complaint charges Aetna with breaching its contracts with both patients and providers. This breach occurs for patients when Aetna attempts to prohibit PPO patients from using their out-of-network benefits. According to the complaint, Aetna has breached its provider agreements by threatening physicians with termination of their in-network status for referring patients to out-of-network providers.

Retaliation and Termination in Violation of Public Policy

The complaint charges that Aetna’s practice of terminating physician contracts, and retaliating against them for advocating medically appropriate health care options for PPO and POS members, is a violation of public policy.

Interference with Prospective Economic Advantage

The complaint charges that Aetna is interfering with surgery centers’ relationships with both physicians and patients by attempting to prevent patients from receiving surgeries at the out-of-network surgery centers, and threatening physicians for performing the surgeries at those surgery centers.

Aetna Retaliation Against Members

In one example cited in the complaint, an Aetna PPO member was treated by Aetna in-network physicians for several medical issues he experienced. The in-network physicians then referred the Aetna member to out-of-network surgery centers for additional treatment. The complaint alleges that the Aetna repeatedly attempted to discourage the member from using the out-of-network providers, refused to authorize medically-necessary services and threatened to withhold reimbursement to the out-of-network providers recommended by in-network

physicians, and in one instance refused to pay for the member's care. In this instance, after three appeals, Aetna finally paid approximately \$9,000 of a \$70,000 bill. The vast majority of this bill remains unpaid by Aetna.

"Although this case specifically addresses Aetna's unlawful actions pertaining to California providers, this issue is national in scope. We urge physicians, medical groups and surgery centers throughout the country to contact legal counsel if they have experienced such actions by Aetna, or any other health insurer/health plan."

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