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Ninth Circuit Issues Shocking Opinion Concerning Health Care Provider ERISA Claims

The Ninth Circuit Court of Appeals is not known for being employer-friendly. So, when the Ninth Circuit issued its latest opinion on health care provider ERISA claims, most thought it would be against employer-sponsored health plans. But, in a shocking opinion, the Ninth Circuit dealt health care providers a serious (and possibly fatal) blow to their recent crusade to use ERISA to pursue claims for reimbursement against employer-sponsored health plans.

In *DB Healthcare v. Blue Cross Blue Shield of Arizona, Inc.* and *Advanced Women's Health Center, Inc. v. Anthem Blue Cross Life and Health Insurance Co.*, the Ninth Circuit affirmed the lower court's dismissal of claims asserted by DB Healthcare and Advanced Women's Health Center against Anthem and Blue Cross of Arizona under ERISA because (1) the providers were not "beneficiaries" within the meaning of ERISA and (2) the providers lacked derivative authority to file suit under ERISA. Both cases involved a typical provider dispute. DB Healthcare and Advanced Women's Health Center submitted claims which were paid by Blue Cross of Arizona and Anthem initially, but were later audited and determined to be ineligible for payment. Blue Cross of Arizona and Anthem attempted to recover the amounts paid in error, and the providers filed suit under ERISA. Given the similarity of the facts, the Ninth Circuit addressed both cases as part of the same ruling.

Following its earlier decision in *Spindex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc.*, the Ninth Circuit concluded that the health care providers are not "beneficiaries" within the meaning of ERISA. ERISA defines a "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." In this case, the providers were authorized to receive direct payment from Anthem or Blue Cross for the medical services they provided. However, the right to receive payment in exchange for services provided is not a "benefit" under ERISA. As a result, the providers did not have direct authority to bring suit under ERISA.

The Court recognized that a health care provider could have derivative authority to file suit under ERISA through an assignment of claims. However, neither provider had such authority. In *DB Healthcare*, the governing plan documents prohibited the assignment of claims. Therefore, any purported assignments of claims which may have been signed by participants were ineffective. In *Advanced Women's Health Center*, the assignment of claims was not prohibited, but the patient assignments were not broad enough to encompass the types of claims being asserted by the provider.

This case further solidifies the legal precedent on these issues and will make it harder for providers to bring similar claims in future cases. There is no doubt that health care providers will continue to look for

creative ways to use ERISA to their advantage in reimbursement disputes involving employer-sponsored health plans. Following this decision, providers can be expected to revise their patient assignment forms to make them as broad as possible so that they will cover any type of claim that might need to be asserted in the future. This makes it all the more important for employers to make certain that their health plan documents and summary plan descriptions include strong anti-assignment provisions and other protective provisions designed to defend against provider reimbursement claims.