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Anti-Assignment Provisions and Providers

Beginning last year, there has been a rash of court decisions giving ERISA participant and/or beneficiary status to providers based on assignments executed by participants at the point of service. The most recent case was issued last week from the United States District Court for the Eastern District of Pennsylvania. In the case, HOWARD BLOOM, D.C. and WEATHER VANE CHIROPRACTIC, P.C. v. INDEPENDENCE BLUE CROSS, the District Court once again granted ERISA participant status to the provider, based on an assignment executed by the participant at the point of service. This is a dangerous trend as it grants to the provider all ERISA rights, including claims and appeals rights. Further, as more and more providers (and their representatives) start to realize how easy it is to hijack ERISA rights, providers can easily turn what is normally only a provider and TPA payment dispute into a huge ERISA issue for the plan sponsor.

However, it's also a trend that can be easily stopped by plan sponsors. Plan sponsors can stop the threat of these cases by placing proper language in their health plan documents and SPDs to prevent the application of provider assignments. At the same time, plan sponsors should also insert proper procedures to follow to appoint a person as a participant's ERISA authorized representative, which is also another avenue that providers have used to turn a provider/TPA dispute into an ERISA issue.