

HEALTH LAW

ALERT

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INSURER CHALLENGED ON OUT-OF-NETWORK OFFSETS

By Matthew F. Didora



MATTHEW F. DIDORA

The situation is a common one: Mrs. Smith received treatment from her long-time physician, Dr. Goodbody. Mrs. Smith's insurance company does not have Dr. Goodbody as one of its in-network providers. Dr. Goodbody is an out-of-network provider. Fortunately, Mrs. Smith has out-of-network benefits, which she assigned to Dr. Goodbody in partial payment. Dr. Goodbody submitted a reimbursement claim to Mrs. Smith's insurer, as the assignee of Mrs. Smith's benefits. Sometime later, Dr. Goodbody received confirmation from Mrs. Smith's insurer that the services provided were covered by Mrs. Smith's policy; however, the insurer declined to pay any portion of Dr. Goodbody's claim. The insurer's decision was not based on any fact or circumstance related to Mrs. Smith or the medical necessity or adequacy of the care provided to her by Dr. Goodbody. Rather, the insurer's denial was premised upon its unilateral determination that it had overpaid Dr. Goodbody on a discrete and independent claim for services provided to an entirely different and unrelated patient.

This practice of insurance companies refusing to pay a provider for one patient because the insurer claims that the same provider was overpaid for services given to a different patient is typically referred to as "offsetting" or "recouping." It is so commonplace that insurers rely upon it in the ordinary course of their business everyday. But is it legal?

Out-of-network providers are not parties to any contract with insurers, nor is there any State statute or regulation that specifically permits offsetting. Absent a contractual arrangement, statute or regulation allowing an offset, case law principles control. New York courts have prohibited offsetting where the debts and credits are not owed between the same individuals in the same capacities. When an out-of-network physician submits a claim to an insurer, it stands in the shoes of the patient who assigned his or her benefits to the physician. For example, when Dr. Goodbody submitted a claim as assignee of Mrs. Smith, he did so in a different capacity than when he submitted a claim on behalf of any

For additional information on this or any health law related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who can be reached at 516-663-6589 or abateman@rmfpc.com or Jay B. Silverman, who can be reached at 516-663-6606 or jsilverman@rmfpc.com

other patient, thus precluding the insurer's right to offset. Moreover, by offsetting against an out-of-network provider, the insurer is reneging upon and breaching the insurance contract it has with its insured (which was assigned to the physician). This leaves the patient without the benefits of the insurance it paid for. Offsetting may also violate the Federal ERISA laws, which require a hearing before an insured may be deprived of its insurance benefits.

Nevertheless, we continue to see insurers offsetting against out-of-network providers. Insurers view themselves as deities having supreme power over physicians and patients, who are excluded from the insurers' decision-making processes.

Based upon the principles referenced above, our Firm recently commenced an action in New York State Supreme Court to put an end to United Healthcare's widespread practice of offsetting against out-of-network providers. If you would like more information concerning this lawsuit or have been denied reimbursements by an insurance company, please contact Matthew F. Didora, the lead litigator on the case, at mdidora@rmfpc.com or (516) 663-6579 or Jay Silverman, Co-Chair of the Firm's Health Law Department, at jsilverman@rmfpc.com or (516) 663-6606.

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