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In-Network Provider Has Standing to Pursue ERISA Remedies, But State Law Reimbursement Claim Completely Preempted by ERISA

Healthcare Law Newsletter

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In *Montefiore Medical Center v. Teamsters Local 272*, 642 F.3d 321 (2d Cir. 2011), the U.S. Court of Appeals for the Second Circuit held that an in-network provider's state law based reimbursement claim is completely preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq*. (ERISA), and rejected the provider's argument that an otherwise valid assignment of benefits is a "nullity" whenever care is provided in-network.

In *Montefiore*, the provider maintained an in-network contract with the defendant plan by virtue of its membership in two preferred provider organizations. Montefiore Medical Center initially filed an action in New York state court seeking more than $1 million in health insurance benefits from the defendant ERISA plan based on state law causes of action, including breach of contract and unjust enrichment. The defendant removed the case to the U.S. District Court of the Southern District of New York, alleging that ERISA completely preempted the claims. The provider moved to remand the action asserting that its claims were based on the contract between the provider and the plan. The district court denied Montefiore's motion to remand, finding that its claims were completely preempted by ERISA. The district court then issued a *sua sponte* order certifying the questions raised on the remand motion to the Court of Appeals for an interlocutory appeal.

On appeal, the Second Circuit affirmed the district court's order in its entirety. In reaching its conclusions, the Second Circuit applied the two-pronged complete ERISA preemption test set forth by the Supreme Court in *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209, 124 S.Ct. 2488, 2495-2496 (2004). The first prong of the test provides that claims are completely preempted by ERISA if they could have been brought by an individual at some point in time under ERISA § 502(a)(1)(B). The second prong provides that no other independent legal duty may be implicated by a defendant's actions. Notably, in performing this analysis, the Second Circuit disaggregated the first prong to avoid confusion between a claim brought solely pursuant to an independent duty having nothing to do with ERISA and a claim that could have been brought under ERISA, but also involved another independent legal duty. In so doing, the Second Circuit disagreed with the provider's position that because it was an in-network provider, a patient's right was to "care at no cost," not to "reimbursement." The Second Circuit determined that the hospital was the type of party that could bring an ERISA § 502(a)(1)(B) claim under a written assignment of in-network benefits from the beneficiaries, because of the manner in which it collected unpaid amounts from, and on behalf of, plan members. Specifically, the beneficiaries would be liable for the provider's unrecovered costs from the benefit plan, even when the contract is silent as to whether the provider can hold the patient liable for unmet obligations. Significantly, the Second Circuit found

that Montefiore's actual claims could be classified as claims for benefits because they involve the "right to payment," as distinguished from the "amount of payment," and therefore, implicate coverage decisions under the plan, such as pre-certification requirements, covered services under the plan and membership eligibility.

The Second Circuit also found that no other legal duty was implicated under the second prong because telephone calls by Montefiore confirming patient eligibility for benefits under the plan did not create independent legal duties. The Second Circuit accordingly affirmed the district court's order denying Montefiore's remand motion because the defendant properly demonstrated federal question jurisdiction for removal of the action to federal court.

This decision brings uniformity to the application of preemption in the complicated area of provider, health plan and participant claim disputes and illustrates the broad scope of ERISA's complete preemption. Whereas previously, a provider could seek to avoid ERISA or litigating in federal court, in the post-*Montefiore* world, claims that involve a question of the participant's eligibility to receive benefits will be found preempted, regardless of its status as an in-network provider.

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