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## Provider Reimbursement

### **Horizon Blue Cross Stiffed N.J. Hospitals For Over \$76 Million, Complaint Says**

**T**hree New Jersey hospitals have accused an insurer of failing to pay them more than \$76 million they are owed for treating members of the insurer's plans (*Hudson Hosp. OPCO LLC v. Horizon Healthcare Servs., Inc.*, D.N.J., No. 16-cv-5922, filed 9/26/16).

Providers and insurers often fight over money, but those disputes rarely get into court, provider-side attorney Michael Schaff, of Wilentz, Goldman & Spitzer PA, Woodbridge, N.J., told Bloomberg BNA. The amount a hospital claims an insurer owes it, however, may reach the point where the hospital believes it must show the insurer it means business, he said. This case could signify that hospitals are becoming more willing to take their claims public, possibly in an effort to sway public opinion in their favor, Schaff said.

Christ Hospital, Bayonne Medical Center and Hoboken University Medical Center are owned and operated by CarePoint Health. The providers Sept. 26 sued Horizon Health Care Services LLC, doing business as Horizon Blue Cross Blue Shield of New Jersey, in the U.S. District Court for the District of New Jersey.

**Unusual Lawsuit.** "This lawsuit is unusual on many fronts," Horizon spokesman Thomas Vincz told Bloomberg BNA.

"First, Horizon enjoys a strong working relationship with New Jersey's hospitals; we have network agreements in place with all but the CarePoint-operated hospitals in New Jersey."

Second, Vincz said, Horizon is "currently in active mediation with CarePoint and working to arrive at a network agreement that meets the obligation we have to negotiate fair pricing on behalf of our members." Horizon's premiums are based on the charges it pays for medical services, so the insurer strives "to strike a balance between being fair to our hospitals while protecting consumers from excessive charges," he said.

Horizon has "been successful in striking that balance with all of our network hospitals," Vincz said. "It seems unusual to file a lawsuit demanding payment for the very charges that are the focus of the ongoing mediation." Vincz said Horizon is "prepared to demonstrate to the court that this suit lacks merit" and is confident it "will prevail."

**'Drastic' Underpayment.** CarePoint's complaint alleged that Horizon refused to pay or "drastically" underpaid the hospitals for care they provided to Horizon

plan members while CarePoint was out of Horizon's network. Horizon violated the Employee Retirement Income Security Act (ERISA) and state law by refusing to pay in full for health-care services provided to patients covered by its plans, the complaint said.

Horizon plan members made thousands of patient visits to CarePoint hospitals between June 2015 and September 2016, the complaint said. More than half of those visits were for emergency services, while the remainder were for nonemergency care within the scope of the out-of-network benefits Horizon provided under the patients' plans, it said.

The total bill for the services was over \$146 million, reflecting the hospitals' usual, customary and reasonable rates. Horizon was responsible for about \$115 million, allowing for co-pays, deductibles and the like, the complaint said. The insurer has paid CarePoint only about \$39 million, leaving an unpaid balance of more than \$76 million, the complaint said.

The underpayment amount will increase, the complaint said, because Horizon subscribers are continuing to seek care at all three hospitals at the rate of about 240 patient visits—or \$4 million to \$6 million—per week.

**One Side of Story.** Schaff cautioned that the complaint shows only one side of the story. Horizon may argue that the hospital group doesn't have standing to sue for reimbursement under ERISA or that it failed to exhaust other remedies before suing. Horizon could argue that the hospitals' rates weren't reasonable or that the providers weren't entitled to further payments because they waived patient portions, he said.

Horizon has lost this standing battle before. The federal trial court in New Jersey said in January that an out-of-network provider had standing to pursue its ERISA claims to recover unpaid benefits against Horizon (*Garden State Pain & Radiology, PC v. Horizon Healthcare Servs., Inc.*, 2016 BL 23774 (D.N.J. 2016)).

That court relied on *N. Jersey Brain & Spine Ctr. v. Aetna, Inc.*, 801 F.3d 369, 2015 BL 294261 (3d Cir. 2015), in which the U.S. Court of Appeals for the Third Circuit said that, when a patient assigns payment of insurance benefits to a provider, the patient also assigns it the right to bring a lawsuit under ERISA.

The standing issue in the current case probably will turn on the language of the assignments from the patients to the providers, Grace Mack, also of Wilentz, Goldman & Spitzer, Woodbridge, N.J., told Bloomberg BNA.

There is a long history between CarePoint and Horizon, Mack said. The hospitals weren't in Horizon's network because the parties couldn't agree on a reimbursement rate, she said. This lawsuit may be a strategy

to set a reasonable reimbursement rate for the parties, Schaff said.

In-network hospitals can negotiate reimbursement rates with insurers, but being out-of-network can pose a problem, Schaff said. There are, however, very few hospitals that don't belong to any insurance networks, Mack said. Those hospitals can increase reimbursements by having good relationships with insurers, developing reputations for being quality providers and meeting the standards that are important to payers, she said.

Schaff predicted that the hospital and the insurer will settle for less than the more-than \$76 million sought. But the dispute won't be resolved quickly, Mack added.

**Balance Billing.** Balance billing, or providers' practice of billing patients for amounts over those paid by insurers, is lurking behind the complaint, Mack told

Bloomberg BNA. Many states have laws requiring insurers to pay the full amount billed for emergency treatment or, at least, precluding providers from sending patients bills for any amount over what the insurers pay.

New Jersey law isn't clear on the issue, she said, but a balance billing law is pending in the New Jersey Legislature.

CarePoint's attorneys, Anthony P. LaRocco and George P. Barbatsuly, of K&L Gates LLP, Newark, N.J., declined to comment for the story.

BY MARY ANNE PAZANOWSKI

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