

## COCSA Joins ERISA Class Action Against UnitedHealth Group

*The Congress of Chiropractic State Associations, COCSA, has voted to join a national ERISA class action filed by Pomerantz, one of the nation's preeminent class-action firms, against UnitedHealth Group. In the action, COCSA will be representing state chiropractic associations in all 50 states in combating alleged ERISA violations in overpayment recoupment abuses.*

On Feb. 8, 2011, the board of the [Congress of Chiropractic State Associations](#) (COCSA) voted to join a national ERISA class action on behalf of its state association members against UnitedHealth Group to challenge overpayment recoupment abuses. The action was originally filed on Jan. 24, 2011 by Pomerantz Haudek Grossman & Gross LLP, one of the nation's preeminent class-action law firms and a leader in combating the abuses of the health insurance industry, on behalf of a group of chiropractors and the Ohio State Chiropractic Association (OSCA).

Pomerantz seeks to represent a nationwide class of all health care providers who have been subjected to improper demands by [UnitedHealth Group](#) to repay previously paid health care benefits for services provided to UnitedHealth Group subscribers, only to have such funds forcibly recouped by the withholding of future payments from unrelated claims in alleged violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), the federal law governing private employee benefit plans. The latest class action against UnitedHealth Group is the third national class action filed by Pomerantz, following similar litigations brought against Aetna and 23 Blue Cross Blue Shield entities in the last two years. Initial court rulings have been favorable to provider plaintiffs.

By far, chiropractic plaintiffs have led all other health care providers in seeking judicial guidance and legal victories against abusive overpayment recoupment crisis faced by all health care providers. COCSA is dedicated to supporting all provider class actions that benefit chiropractors by seeking to stop such abusive and discriminative insurance practices. Through this historic and landmark decision to join the class action, COCSA will be asserting its right, through representational standing, to obtain appropriate equitable relief to address the abuses at issue on behalf of its state association members in all 50 states.

UnitedHealth Group, which acquired the health insurance business of Health Net of the Northeast in December 2009, is the nation's largest private health plan by revenue. The action alleges that the postpayment audit and review process as applied by the defendants violates ERISA in that its repayment demands are retroactive adverse benefit determinations that particular services are not covered under the terms of the United and Health Net health care plans, but without proper appeals or other protections otherwise available under ERISA for both self-funded and fully insured health care plans offered through private employers.

"ERISA establishes the procedures that insurance companies must follow when making benefit determinations - whether prior to payment or retroactively," said plaintiffs' counsel, D. Brian Hufford of Pomerantz. "The Defendants here, as is true for many insurance companies, are violating their ERISA obligations in order to recover funds that simply do not belong to them."

In the complaint, the plaintiffs allege that, as a means to maximize their profits, United and Health Net used their postpayment audit and review process to make retroactive adverse benefit determinations whereby they demanded that providers repay funds they had previously received for providing services to United and Health Net subscribers. Moreover, defendants frequently withhold new benefit payments for unrelated services to apply toward the alleged overpayments, even where there has been no valid appeal process or validation that any sums are in fact owed by the providers, a practice called "offsetting."

Plaintiffs' co-counsel, Vincent Buttaci of Buttaci & Leardi, LLC, stated that "providers are placed in an untenable position as a result of false fraud allegations made against them in an effort to coerce and intimidate, and through our lawsuit they are now fighting back."

In the last year alone, the chiropractic profession has obtained what may well be more significant reimbursement legal victories than in its entire 105-year history. On Jan. 24, 2011, a federal district court in Chicago dismissed BCBS's state law counterclaims against one of the plaintiff chiropractors in the largest ERISA class action brought against 23 BCBS entities filed in 2009, after the court upheld the ERISA claims on May 17, 2010, in denying the defendants' motion to dismiss.

On Oct. 27, 2010, a federal district court ruled against BCBS of Rhode Island, which was seeking to pursue state law claims for more than \$400,000 against a chiropractic physician and an occupational therapist, finding that ERISA "completely preempts," supersedes and limits BCBSRI overpayment recoupment practices. The court reaffirmed this decision on Jan. 19, 2011, in denying BCBSRI's motion to reconsider its earlier ruling on federal subject matter jurisdiction and denying its parallel motion to certify the court's interlocutory order for immediate appeal to the First Circuit. A preliminary injunction against BCBSRI was issued by the court on Nov. 11, 2010 to force the insurer to halt its ongoing recoupment of new benefit payments.

"Although COCSA didn't lead to initiate these initial victories, COCSA is certainly taking the lead to finish our fight for justice and equality in the healthcare market, in advocating for appropriate chiropractic care for all of our patients. While we salute our colleagues whose legal wisdom guided our profession to this great start, COCSA has positioned our profession to ensure our victories from start to finish. Our COCSA decision today to join is the proof for this timely leadership," said [Kate C Rufolo, DC](#), president of COCSA.

"ERISA is the federal law that protects patients and providers from improper denials and delays. When all internal appeals fail to resolve denials and/or payers fail to comply with ERISA, a lawsuit is normally filed as an ERISA judicial appeal to a federal court to resolve administrative grievances," said Dr. John LaMonica, DC, COCSA officer, whose New York Chiropractic Council was the plaintiff for the class action against 23 BCBS entities, and also a key driver for today's COCSA decision.

To review a copy of the official class action against UnitedHealth Group, visit [www.erisaclaim.com/UHC\\_Complaint.pdf](http://www.erisaclaim.com/UHC_Complaint.pdf).

*Source:* Congress of Chiropractic State Associations