

ADA Leads the Way: Is This the Solution to Managed-Care Abuses?

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While lawsuits aren't usually the best way to accomplish something, occasionally they are the only way. Apparently, this was the conclusion the American Dental Association (ADA) came to when it filed a lawsuit on May 19, 2003.

The lawsuit is a class-action complaint filed against Cigna; Connecticut General; Cigna Dental; MetLife; and Mutual of Omaha (the defendants). The complaint seeks action based on the RICO (Racketeer Influenced and Corrupt Organization) Act and raises various state-law claims.¹

In its claim, the ADA alleges that the defendants "utilize automated programs to process claims forms," and that the claims systems:

- "automatically substitute a dental service code that has a lower reimbursement rate";
- "automatically combine multiple procedures to reduce the amount to be paid";
- "automatically request additional documentation from Class Plaintiffs (dentists), even when such documentation is not required, to delay payment"; and
- "automatically deny claims altogether."

The suit also alleges questions of "payment delay"; "fraudulent concealment"; "coercive use of economic power"; and "conspiracy." Ultimately, the 36-page complaint alleges seven counts, including several RICO actions; "declaratory and injunctive relief"; "breach of contract"; "unjust enrichment"; and "violations of state prompt-pay statutes."

The relief sought includes treble damages on "payments due them for services on a fee-for-service basis"; preventing defendants from "employing automated processing techniques that use improper cost criteria to reject claims"; injunctive relief preventing defendants from "intentionally understaffing their claims processing department as a means of delaying payments"; statutory interest on payments due; punitive damages; and legal expenses.

While some may see this RICO action as a valiant attempt, but one due to fail, it is no coincidence that this action was filed in the same U.S. District Court as another news-making lawsuit. Just two days after the ADA filed its action, it was announced that in a similar class-action suit brought against Cigna; Aetna; United Health; Wellpoint Health; Humana; Anthem; Prudential; Pacific Care; and Coventry, Aetna had settled out.²

Aetna got out of the case with a \$470 million settlement that included paying \$100 million to the doctors; \$20 million to a research foundation; \$50 million in attorney's fees; and agreeing to change the way its medical bills are paid, which will cost \$300 million more over several years.³

The other eight defendants are still fighting the MDs, but Aetna's decision to settle can only hurt itself. One article quotes the MDs' attorney as commenting regarding the remaining defendants:

"Either they follow Aetna's lead or we look forward to trying the case."⁴

In addition, in another action pending in the same U.S. District Court, the Connecticut Medical Society is suing the entire Blue Cross Blue Shield Association - also reportedly a RICO action.⁴

Needless to say, the chiropractic profession will want to take notes as the ADA proceeds through its lawsuit. The accusations made in the lawsuit are echoes of complaints DCs have had against managed care for many years.

This also breathes more hope into the appeal by the ACA in its Trigon litigation. While the Trigon case is similar in many ways, it also contains the attempt to contain and eliminate a competing health-care profession (chiropractic) through the adoption of anti-competitive payment and coverage policies.

Health providers are finally beginning to gain some ground in the managed-care battle. There is no reason chiropractic can't do so, as well.

1. *The American Dental Association, et al, v. Cigna Corporation, et al.* United States District Court, Southern District of Florida, Miami Division.
2. Reports: Aetna to settle doctor pays suit. *USA Today*, May 21, 2003.
3. Aetna agrees to settle suit with doctors. *USA Today*, May 22, 2003.
4. Aetna OKs \$170M settlement with doctors. *USA Today*, May 22, 2003.

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