

Federal Court Ruling Deals Another Blow to Cigna's Attempts at Overpayment Recoupment

March 29, 2017

On March 8, 2017, the U.S. District Court for the District of Connecticut (the "**Connecticut Court**") ruled, in *Connecticut General Life Insurance Company v. True View Surgery Center One, LP*, that Connecticut General Life Insurance Company ("**Cigna**") was barred from pursuing recoupment from True View and other affiliated surgery centers (collectively, the "**Surgery Centers**") for reported overpayments attributable to the Surgery Centers' alleged fee-forgiving billing practices. Cigna served as a health benefits insurer and/or a third-party claims administrator for 316 health plans, 293 of which were subject to ERISA (collectively, the "**ERISA Plans**"). The Surgery Centers were out-of-network medical care providers that rendered services to participants in the ERISA Plans. With respect to the ERISA Plans, Cigna brought this case in its capacity as claims administrator and plan fiduciary of the plans, alleging that the Surgery Centers (i) lured participants to their facilities by offering services at less than normal cost and waiving the ERISA Plans' cost-sharing requirements (e.g., deductibles, copayments, and coinsurance), (ii) subsequently submitted bills to Cigna for the cost of such services at "grossly inflated" amounts, and (iii) did not disclose to Cigna their practices of waiving participants' cost-sharing obligations (the "**Fee Forgiveness Protocol**"). Relying on an exclusion in the ERISA Plans to the effect that no benefits would be paid for charges for which a participant (a) was not obligated to pay, (b) was not billed, or (c) would not have been billed except that such charges were covered under the plan (the "**Exclusion**"), Cigna sought to recover overpayments it made to the Surgery Centers under the ERISA Plans. The Connecticut Court dismissed Cigna's claim for overpayment recoupment and other claims related to the ERISA Plans on the grounds that Cigna's interpretation of the Exclusion, as applied to the Fee Forgiveness Protocol, had already been held to be "legally incorrect" in *Connecticut General Life Insurance Company v. Humble Surgical Hospital, LLC*, a case decided in 2016 by the U.S. District Court for the Southern District of Texas. [View our prior post regarding the decision in Humble Surgical Hospital](#). In light of the Connecticut Court's decision, as well as other court decisions in the past year regarding the Fee Forgiveness Protocol and similar practices by out-of-network medical providers, employers that sponsor group health plans should carefully review the exclusions and other provisions in their plan documents to ensure they are comprehensive and inoculate against excessive charges from out-of-network providers. For example, the plan and its SPD must clearly state the implications of a participant's failure to fully pay his or her cost-sharing obligations under the plan. [View the Connecticut Court's decision](#).