

Class Actions Against Some Insurers Now Closer to Reality

BY ALICIA AULT
Contributing Writer

Physicians frustrated with seemingly arbitrarily denied claims will have their day in court later this year with at least six insurers, thanks to a recent Supreme Court decision to deny the plans' appeal of a class action suit. But settlements related to improper denials by Cigna and Aetna are likely to provide vindication even sooner.

The legal actions affect almost every practicing physician in the United States—about 900,000 doctors.

A series of suits, originally filed by several state and county medical societies, was consolidated in a U.S. District Court in Florida in 2000 and certified as a class action in 2002. The filing named Aetna, Anthem, Cigna, Coventry, HealthNet, Humana, PacificCare, Prudential, UnitedHealthcare, and WellPoint as defendants, and alleged that the plans violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in fraud and extortion in a common scheme to wrongfully deny payment to doctors.

Aetna and Cigna broke off and entered into negotiations, an enormous process involving more than 100 attorneys,

19 state and county medical societies, the American Medical Association, and the plans' CEOs.

The two insurers settled in 2003, but the other parties have vowed to continue to fight, and are scheduled for trial in September in the Florida courtroom of Judge Federico Moreno. Another suit, with 60 Blue Cross and Blue Shield plans as defendants, is also before Judge Moreno.

Still, those other insurers could possibly follow in Aetna and Cigna's footsteps.

The Aetna claims deadline has passed, and physicians had until Feb. 18 to make a claim against Cigna, with two options for recouping losses. One was to make a general claim on Cigna's \$30 million settlement pot, which will be divided equally among all who make such a claim. Or, physicians could reconstruct claims and seek repayment according to either a general amount per CPT code or a more specific amount based on a complete medical record.

Physicians who did not meet that deadline will still reap the benefits of the settlement, according to David McKenzie, reimbursement director at the American College of Emergency Physicians, who explained the various options to physicians at a recent ACEP meeting in Orlando, Fla.

Aetna agreed to set aside \$300 million for prospective relief, and Cigna agreed to a \$400 million figure. These amounts represent what is likely to be paid to physicians now that the two insurers have also agreed to a number of changes in business practices.

For instance, both will pay for vaccines and their administration. And the insurers will no longer automatically downcode evaluation and management codes, and will separately identify and pay modifier -25, which allows physicians to bill for evaluation and management service on the same day as a procedure. Other coding and editing changes will also lead to future income for physicians.

Both insurers agreed to disclose physician fee schedules and to change the schedules only once a year. Aetna's schedules were posted on a Web site, and Cigna agreed initially to post schedules via e-mail. Both also said they would make a preadjudication tool available so physicians could determine in advance what they might be paid for a claim.

Clean claims have to be paid within 15 days, whether submitted electronically or on paper. Aetna agreed to pay interest at the lesser rate of prime or 8%, and Cigna agreed to 6%. ■

New Federal Law Will Limit Class-Action Lawsuits

BY JOYCE FRIEDEN
Associate Editor, Practice Trends

WASHINGTON — People who have suffered adverse outcomes due to drugs or medical devices may face more delays in suing manufacturers for damages now that federal class-action lawsuit legislation has been signed into law.

The law, known as the Class Action Fairness Act of 2005, would move from state court to federal court any class-action lawsuit in which the amount of damages claimed was greater than \$5 million and involved citizens in different states. The law also outlines circumstances in which federal courts can decline to hear class-action cases.

Proponents of the law, which passed in both the House and Senate in record time, say that it will help decrease the number of "junk lawsuits" that are clogging up the state courts.

"America's employers and consumers are the big winners," Tom Donohue, president and CEO of the U.S. Chamber of Commerce, said in a statement. "Reform of the class action lawsuit system will reduce frivolous lawsuits, spur business investment, and help restore sanity to our nation's legal system."

Critics of the bill, however, say that it will deprive citizens of their right to sue when they are injured by a defective product. "There are only 678 federal trial judges in the system, but there are 9,200 state judges in courts of general jurisdiction," said Jillian Aldebron, counsel and communications coordinator for Public

Citizen's Congress Watch, a citizen watchdog group. "So you're talking about cases ordinarily divided up among 9,200 judges and squeezing them into the courtrooms of 678 judges. Even if they are willing to hear the cases, it's going to take years, and these cases take years in state court [already]."

Many physician organizations, including the American Medical Association and the American College of Physicians, have declined to take a stand on the bill; their efforts are more focused on tort reform legislation affecting malpractice cases.

Senior citizens' lobby AARP opposed the bill. "We felt that there wasn't an adequate basis for consumers no longer having the option of bringing a multistate case in state court," said Larry White, senior legislative representative. "We acknowledge there are abuses on both sides in the system, but when you in essence say that the federal courts will have jurisdiction of these cases ... knowing the federal courts oftentimes don't certify those cases, you're in essence saying people who have been genuinely harmed don't have options."

The Bush administration stated the law will help consumers. "The bill will remove significant burdens on class-action litigants and provide greater protections for the victims whom the class-action device originally was designed to benefit," the administration said in a statement.

The law would affect only cases filed after the bill was signed, noted Ms. Aldebron. ■

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