

## Out-of-Network ERISA Claims: Identifying Provisions Subject to Provider Challenge

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Reimbursement disputes between healthcare providers and payers involving out-of-network claims have increased sharply in recent years. These disputes involve critical legal and practical considerations that ERISA counsel must have a full understanding of to handle out-of-network payment claims under ERISA effectively.

Section 502(a)(1)(B) claims arise when health plan fiduciaries or administrators deny a claim for benefits that the plaintiff alleges are due under the healthcare plan. Multiple lawsuits challenging the billing and payment practices between out-of-network providers and health insurers emphasize the need for plans to include unambiguous anti-assignment language in health plan documents and summary plan descriptions to avoid or limit out-of-network claims, and for medical providers to enter strong assignment and personal representative agreements with their patients.

ERISA counsel needs a clear understanding of plan language provisions, as well as other factors, that will render out-of-network payment denials subject to successful challenge by providers. As recent cases have illustrated, plan language that denies reimbursement for services in which the provider has a fee-forgiveness provision may no longer be enough to insulate the payor from claims.

Partner Andrew Hamelsky will serve on a panel of experienced professionals outlining challenges to denial of out-of-network payments based on fee-forgiveness provisions, recent cases and key arguments raised in the pursuit of out-of-network claims, bad faith claims in network negotiations as a factor in denying out-of-network reimbursement claims, factors for plaintiff counsel to consider in pursuing claims under ERISA Section 502(a)(1)(B) and benefits.

The panel will review these and other key issues:

- What is the impact of fee forgiveness provisions in plan documents on out-of-network reimbursement claims?
- What other factors can lead to successful challenges of out-of-network claim denials by carriers?
- What is the anticipated impact of recent court decisions on payors' out-of-network policies?

