

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEUROLOGICAL SURGERY, P.C.,

Plaintiff,

-against-

AETNA HEALTH INC. and AETNA HEALTH
INSURANCE COMPANY OF NEW YORK,

Defendants.
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: **COMPLAINT**
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: Docket No. 19-cv-04817 (DRH)(ARL)

: *Case Removed from the New York*
: *Supreme Court, Nassau County*

: **JURY TRIAL DEMANDED**
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Plaintiff, Neurological Surgery, P.C (“NSPC”), by its attorneys, Garfunkel Wild, P.C., alleges for its Complaint against the Defendants, Aetna Health Inc. and Aetna Health Insurance Company of New York (collectively, “Aetna”), that:

INTRODUCTION

1. Plaintiff is NSPC, a Long Island-based medical practice, which brings this lawsuit against Aetna because Aetna has failed to properly and timely honor its obligation to pay NSPC for medically necessary services that NSPC provided to the members and/or subscribers of Aetna’s health plans and their beneficiaries (collective, “Aetna Members”).

2. As we explain in detail below, NSPC is the largest private neurosurgery practice on Long Island and in the tri-state area. Its award-winning specialists are among the best neurosurgeons in New York City and on Long Island and serve as Chiefs of Neurosurgery in some of the most prestigious hospitals on Long Island.

3. NSPC maintains offices in Great Neck, Rockville Centre, Lake Success, Bethpage, Commack, West Islip, Port Jefferson Station, Patchogue, Queens, and Manhattan. It

has developed Centers of Excellence in a wide variety of neurosurgery and related subspecialties, including a Brain Tumor Center, Spine Center, Trigeminal Neuralgia and Face Pain Center, Cerebrovascular/Neuroendovascular Center, Pediatric Neurosurgery Center, General Neurosurgery Center, Movement Disorder Center, Epilepsy Center, Concussion Center, Stereotactic Radiosurgery Center, Chiari Malformation Center, and Pain Center.

4. Upon information and belief, Defendants Aetna Health Inc. and Aetna Health Insurance Company of New York are both subsidiaries of Aetna, Inc., a health insurance company that entered into an agreement in December 2017 to be acquired by CVS Health Corporation at the record price of \$69 billion.

5. Aetna enters into agreements with health care providers whereby the providers join its “provider networks.” The physicians that join the provider network agree to provide health care services to members of the health plan at contractually agreed upon reimbursement rates, which are typically discounted rates, compared to the providers’ usual and customary rates. Such providers are known as “in-network” providers.

6. Other providers, like NSPC, do not enter into contracts with Aetna, and bill the usual, customary, and reasonable charges for the services rendered. Such providers are known as “out-of-network” or “non-participating” providers.

7. Upon information and belief, a substantial number of Aetna’s agreements with its subscribers or members and their beneficiaries give these Aetna Members the right to seek medically necessary treatment from health care providers who are not participating providers in Aetna’s health care networks.

8. Under these agreements, when an out-of-network provider renders medically necessary treatment to an Aetna Member, Aetna is obligated to reimburse the Aetna Member or out-of-network provider at the usual, customary, and reasonable charges for the services rendered, less any co-payment, co-insurance, member out-of-pocket, or deductible amounts. (This amount is the “UCR Rate.”)

9. By its own choice, NSPC is not a participating provider in Aetna’s networks. Notwithstanding NSPC’s status as a non-participating provider, NSPC routinely receives authorizations and assignments from its patients who are Aetna Members to receive payment directly from Aetna.

10. This litigation arises primarily out of Aetna’s wrongful failure and refusal to reimburse NSPC – in many cases, at all, and in other cases, at anything more than a dramatically reduced rate – for medically necessary services that NSPC’s surgeons provided to Aetna Members.

11. As set forth below, Aetna’s persistent refusal to pay for NSPC’s services has breached myriad legal obligations and violated federal and state law. Accordingly, NSPC is entitled to the relief demanded in this Complaint.

PARTIES

12. Plaintiff NSPC is a New York professional corporation with its principal place of business located at 100 Merrick Road, Suite 128W, Rockville Centre, New York.

13. Upon information and belief Defendant Aetna Health Inc. is a New York for-profit health maintenance organization with a principal place of business located at 151 Farmington Avenue, Hartford, Connecticut.

14. Upon information and belief Defendant Aetna Health Insurance Company of New York is a New York for-profit health insurance company with a principal place of business located at 333 Earle Ovington Boulevard, Suite 104, Uniondale, New York.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

Aetna Has Failed to Pay NSPC's Out-of-Network Claims at All, or Has Failed to Pay at the Correct Rate

15. Many of the patients who seek out and are treated by NSPC have complex, and often emergent, neurological conditions requiring neurosurgical procedures and treatment.

16. NSPC's physicians perform these procedures at hospitals and other healthcare facilities located throughout the New York metropolitan area.

17. A significant number of NSPC's patients have health insurance coverage from Aetna, or are members, subscribers, or beneficiaries of group health plans for which Aetna is the plan sponsor or administrator.

18. As set forth in detail below, in addition to offering fully-insured health plans, Aetna acts as the plan sponsor or administrator of self-insured group health plans by making determinations regarding plan interpretation, coverage, the awarding or denial of benefits, the processing and determination of appeals, and the payment of benefits.

19. A substantial number of Aetna's agreements with its subscribers or members give these Aetna Members the right to seek medically necessary treatment from health care providers who are not participating providers in Aetna's health care networks.

20. Under these agreements, when an out-of-network provider renders medically necessary treatment to an Aetna Member, Aetna is often obligated to reimburse the Aetna Member or out-of-network provider at the UCR Rate, or a percentage thereof, based upon the Member's plan.

21. Alternately, under Section 2719A(b) of the Public Health Service Act, 42 U.S.C. § 300gg-19a(b), and 29 C.F.R. § 2590.715-2719A(b), Aetna, as the sponsor or administrator of any self-insured group health plan, must provide coverage for out-of-network emergency health care services, and must do so at the greatest of (a) the median in-network rate that the plan pays for the same services; (b) the rate that the plan pays for out-of-network services, which is typically based upon the UCR Rate; and (c) the rate offered by Medicare. In addition, Aetna may not impose any greater administrative requirement or limitation on coverage for out-of-network emergency services than it does for in-network emergency services, nor can it impose greater co-payments, co-insurance, member out-of-pocket, or deductible amounts for its members for out-of-network emergency services than it does for in-network emergency services.

22. Similarly, Sections 3216(i)(9), 3221(k)(4), and 4303(a)(2) of the New York Insurance Law require Aetna to provide members of its fully-insured plans with coverage for medically necessary emergency medical services. Additionally, Sections 3217-a(a)(8), 3221(k)(4), 4303(a)(2), and 4900(c) of the New York Insurance Law, and Section 4408(1)(h) of the New York Public Health Law, require that Aetna, when offering a managed care product,

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