

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PODIATRIC OR OF MIDTOWN
MANHATTAN, P.C., On its Own Behalf and as
the Assignee of Various Patients Named in the
Within Complaint

Plaintiff,

v.

UNITED HEALTH GROUP INC., UNITED
HEALTHCARE SERVICES, INC., UNITED
HEALTHCARE INSURANCE COMPANY,
UNITED HEALTHCARE SERVICE LLC,
OPTUM GROUP, LLC, OPTUM, INC.,
OXFORD HEALTH PLANS LLC, AETNA
HEALTH INC., AETNA HEALTH
INSURANCE COMPANY OF NEW YORK,
AETNA LIFE INSURANCE COMPANY, and
AETNA LIFE INSURANCE GROUP,

Defendants.

Case No.:

COMPLAINT

Plaintiff Podiatric OR of Midtown Manhattan, P.C. (“Podiatric OR”) on its own behalf and as the assignee of various patients¹ named in the within complaint (collectively, “Plaintiffs”), based upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief formed after an inquiry reasonable under the circumstances, assert the following in support of their claims against Defendants.

Nature of the Case

1. Defendants United Healthcare and its group of subsidiary and affiliated companies (UNITED HEALTH GROUP INC., UNITED HEALTHCARE SERVICES, INC., UNITED HEALTHCARE INSURANCE COMPANY, UNITED HEALTHCARE SERVICE LLC,

¹ The patients whose treatment forms the underlying basis of the within claims have been referred to in this complaint by letter identifiers to comply with HIPAA.

OPTUM GROUP, LLC, OPTUM, INC., OXFORD HEALTH PLANS LLC) (collectively referred to herein as “United”) were and are in the business of insuring and administering health insurance plans, many of which are employer-sponsored and governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.* (the “United Plans”). United is one of the largest health insurers in the State of New York.

2. Defendants Aetna Health Inc. (AETNA HEALTH INSURANCE COMPANY OF NEW YORK, AETNA LIFE INSURANCE COMPANY, and AETNA LIFE INSURANCE GROUP) (collectively referred to herein as “Aetna”) were and are in the business of insuring and administering health insurance plans, many of which are employer-sponsored and governed by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001, *et seq.* (the “Aetna Plans”) (United Plans and Aetna Plans are collectively referred to as “Plans”) Aetna is one of the largest health insurers in the State of New York. (United and Aetna are collectively known as “Defendants”)

3. In some instances, Defendants provided a fully-insured product in which the employer paid a per-employee premium to the Defendants, and the Defendants assumed the risk of providing health coverage for insured events.

4. In other instances, the Defendants acted as administrators of the insurance plans for the employer, and made all benefit determinations. The Defendants authorized benefit checks to be issued out of bank accounts which they controlled. Periodically, the Defendants notified the sponsors of the self-funded plans of the need to replenish the accounts so that benefits could be paid. Defendants nevertheless continued to control these accounts, were fully responsible for processing the insurance claims, and made the determinations whether to issue any checks from these accounts.

5. On information and belief, in both instances, the Defendants had a substantial

financial incentive to minimize expenditures for the plans, and the Defendants bore at least a portion of the risk. For example, the Defendants often provided “stop loss” coverage to self-insured plans where claims in the aggregate exceeded a pre-determined amount during a plan year. On information and belief, the claims at issue here involve both fully-insured and self-insured plans.

6. With respect to all United Plans, United served as the claims’ administrator, responsible for determining whether any given claim is covered by the corresponding United Plan and effectuating any resulting benefit payment. With respect to the coverages at issue in this action, including the denial of coverage for office-based surgery facility fees as detailed herein, United exercised complete control over such decisions and adopted its own internal policy to justify such denials without any involvement, participation or express approval by employers or plan sponsors. As such, insofar as is herein pertinent, United was a fiduciary with respect to all United Plans covered under ERISA.

7. With respect to all Aetna Plans, Aetna served as the claims’ administrator, responsible for determining whether any given claim was covered by the corresponding Aetna Plan and effectuated any resulting benefit payment. With respect to the coverages at issue in this action, including the denial of coverage for office-based surgery facility fees as detailed herein, Aetna exercised complete control over such decisions and adopted its own internal policy to justify such denials without any involvement, participation or express approval by employers or plan sponsors. As such, insofar as is herein pertinent, Aetna was a fiduciary with respect to all Aetna Plans covered under ERISA.

8. Under the terms of all United Plans, United was obligated to cause the plans to make benefit payments when someone insured by one of those plans (a “United Insured”) received health care treatment that covered by the terms of that plan (a “Covered Service”). Most United Plans, and all those at issue in this action, allowed United Insureds to receive insurance benefits

from both in-network (“INET”) providers and out-of-network (“ONET”) providers. This case concerns United’s handling of ONET claims.

9. Under the terms of all Aetna Plans, Aetna was obligated to cause the plans to make benefit payments when someone insured by one of those plans (an “Aetna Insured”) received a Covered Service. Most Aetna Plans, and all those at issue in this action, allowed Aetna Insureds to receive insurance benefits from both INET and ONET. This case concerns Aetna’s handling of ONET claims.

10. Upon information and belief, all the United Plans herein pertinent defined Covered Services to include outpatient surgery, and provide benefits for both: (1) the expense associated with the surgeon’s time and expertise (a “surgeon’s fee”); and (2) the expense associated with the “facility” in which the surgery was performed (a “facility fee”).

11. Upon information and belief, all the Aetna Plans herein pertinent defined Covered Services to include outpatient surgery, and provided benefits for both: (1) a surgeon’s fee; and (2) a facility fee.

12. Until relatively recently, United honored these plan terms. When a United Insured received medically necessary, ONET outpatient surgery, United caused the insured’s United Plan to make one benefit payment for the surgeon’s time/expertise and another for the “facility fee.” With respect to the “facility fee,” United paid benefits regardless of whether the entity was a hospital, an ambulatory surgical center (“ASC”), or an office-based surgery (“OBS”) “facility”—that is, an operating room in an office which was registered with the State of New York; reported to the Department of Health of the State of New York (the DOH); and accredited by entities approved by the DOH, in which the surgeon performed the surgery. Like hospitals, OBS practices are monitored and accredited under New York law, and the rationale for paying a fee to a hospital applies equally to an OBS practice. The expenses of running an operating room in an OBS practice

are similar to those of other facilities. Although those other facilities may have other expenses, the costs of rendering care in an operating room are similar.

13. Until relatively recently, Aetna honored these plan terms. When an Aetna Insured received medically necessary, ONET outpatient surgery, Aetna caused the insured's Aetna Plan to make one benefit payment for the surgeon's time/expertise and another for the "facility fee." With respect to the "facility fee," Aetna paid benefits regardless of whether the entity was a hospital, an ASC, or an OBS "facility."

14. United previously caused the plans to pay these facility fees because they were covered by the United Plans, and because United (and the plans) recognized that there are substantial costs associated with setting up and maintaining any operating room, whether it is an OBS, ASC or hospital in which surgeries could be performed, which are separate and apart from the professional fees paid to the surgeons themselves. In fact, many types of outpatient surgery (for example, podiatric surgery) can be performed as safely and at lower cost in office-based settings, rather than in ambulatory surgery locations, and the risk of certain complications is much smaller than in hospitals. This is why New York State has created a separate credentialing process for OBS practices.

15. Aetna previously caused the plans to pay these facility fees because they were covered by the Aetna Plans, and because Aetna (and the plans) recognized that there are substantial costs associated with setting up and maintaining any operating room, whether it is an OBS, ASC or hospital in which surgeries could be performed, which are separate and apart from the professional fees paid to the surgeons themselves.

16. More recently, however, the Defendants have asserted that they can use their authority to cause all Plans uniformly to refuse to pay OBS fees, despite the fact that the language in the overwhelming majority of the Plans related to outpatient surgeries has not materially

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