

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MONTEFIORE MEDICAL CENTER,
MONTEFIORE NEW ROCHELLE HOSPITAL,
MONTEFIORE MOUNT VERNON
HOSPITAL, MONTEFIORE NYACK
HOSPITAL, ST. LUKE'S CORNWALL
HOSPITAL, WINIFRED M. BURKE REHAB
HOSPITAL, AND WHITE PLAINS HOSPITAL
MEDICAL CENTER,

Plaintiffs,

-v-

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

Defendants.

Case No. 1:21-cv-07838

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

The Defendants herein, Aetna Health Inc. and Aetna Health Insurance Company of New York (collectively, "Aetna") by their attorneys, Baker Botts L.L.P., respectfully represent as follows:

1. Aetna respectfully invokes this Court's subject-matter jurisdiction and removes the state-court action described below from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York. Removal is proper pursuant to 28 U.S.C. §§ 1331, 1441, and 1446.

2. On or about August 17, 2021, Plaintiffs Montefiore Medical Center, Montefiore New Rochelle Hospital, Montefiore Mount Vernon Hospital, Montefiore Nyack Hospital, St. Luke's Cornwall Hospital, Winifred M. Burke Rehab Hospital, and White Plains Hospital Medical

Center (collectively, “Montefiore”) filed a Summons with Notice, Index No. 811188/2021E, in the Supreme Court of the State of New York, County of Bronx (the “State Action”). On August 20, 2021, Plaintiffs served the Summons with Notice on Aetna by service to the New York State Department of Financial Services. The Department of Financial Services then served Aetna with a copy of the Summons with Notice on August 26, 2021. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all pleadings, process, and orders served upon Aetna in the State Action are attached hereto as Exhibit A.1-2.

3. On September 9, 2021, Aetna served Plaintiffs’ counsel with a demand for a complaint, which must be served on Aetna by September 29, 2021, pursuant to N.Y. CPLR § 3012(b).

4. In its Summons with Notice, Montefiore alleges, in part, that Aetna violated the New York State Prompt Pay Law, N.Y. Insurance Law § 3224-a, by failing to timely pay Montefiore for “millions of dollars for services that were actually provided and which Aetna knew it was responsible to pay.” Exhibit A.2, Summons with Notice, at ¶ 24. Montefiore in substance, appears to allege that Aetna directly reimbursed New York State for healthcare costs mistakenly billed to Medicaid when Aetna was the primary payor, rather than reimburse Montefiore at higher contract rates for the same services. Although Montefiore does not specify the members whose claims are at issue in the Summons with Notice, Aetna believes that most, if not all, of those members are enrolled in employee welfare benefit plans governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, as amended (“ERISA”). Pursuant to 29 U.S.C. §1132(e)(1), federal courts have primary jurisdiction over such claims.

5. Thus, although Montefiore’s allegations concerning its right to payment are framed as arising under New York Insurance Law, they are in fact cognizable under ERISA and are

therefore preempted. *See Neurological Surgery, P.C. v. Siemens Corp.*, No. 17 Civ. 3477 (ADS) (AKT), 2017 WL 6397737, at *6 (E.D.N.Y. Dec. 12, 2017) (“Although plaintiffs cite New York statutory law in the complaint, the factual allegations reveal the true motive of this action, to wit, to recover benefits for medical services to which, plaintiffs, as assignees, believe they are entitled under the terms of the plans. Thus, plaintiffs are seeking to use N.Y. INS. LAW §§ 4301(b)(2) and 3224-a(a), as ‘separate vehicle[s] to assert a claim for benefits outside of ERISA’s remedial scheme.’”) (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 217 (2004)).

6. Moreover, the remaining state law claims referenced in Montefiore’s Summons with Notice are either completely preempted by ERISA and/or are removable to federal court pursuant to supplemental jurisdiction. Montefiore alleges that Aetna breached certain services agreements with the hospitals when Aetna denied benefits claims made by its members for certain hospital services. Exhibit A.2 at ¶¶ 26-29. But this allegation also goes to Montefiore’s supposed right to payment from Aetna pursuant to claims of coverage under ERISA-controlled plans. *See, e.g., Davila*, 542 U.S. at 209 (“Therefore, any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted. . . . Hence, causes of action within the scope of the civil enforcement provisions of § 502(a) [are] removable to federal court.”).¹ Further, concerning these and any remaining claims, including any state-law contract claims referenced in the Summons with Notice, this Court has subject-matter jurisdiction over the entire State Action under 28 U.S.C. § 1367(a), which provides for supplemental jurisdiction over state-law claims that form part of the same case or controversy as claims over which federal courts have original jurisdiction. The allegations in the Summons with Notice all

¹ Internal citations, quotation marks, and alterations omitted.

concern Montefiore's supposed right to payment from Aetna for services provided to Aetna insureds. Thus, the entire State Action is properly removed to this Court on the basis of federal-question jurisdiction pursuant to 28 U.S.C. §§ 1441(a) and 1446(b). *Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 332-33 (2d Cir. 2011) (holding certain claims completely preempted by ERISA and, therefore, that "assuming *arguendo* that any state-law claims exist, they are properly subject to the District Court's supplemental jurisdiction").

7. Accordingly, the State Action is one which may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

8. The filing of this Notice of Removal is timely, as it is being made within thirty (30) days of the date Aetna first received notice that this action became removable based on federal-question jurisdiction. The Summons with Notice was served on the New York Department of Financial Services on August 20, 2021 and, in turn, on Aetna by the Department on August 26, 2021. Aetna filed and served this Notice of Removal on September 20, 2021. *See, e.g., Whitaker v. Am. Telecasting, Inc.*, 261 F.3d 196, 206 (2d Cir. 2001) ("Because the defendants filed their notice of removal within that thirty day period, we find no error with the district court's ultimate conclusion that the removal was timely.").

9. By filing this Notice of Removal, Aetna does not waive any defenses that may be available to it.

10. As required by 28 U.S.C. § 1446(d), Aetna will provide written notice of this Notice of Removal to Garfunkel Wild, P.C., counsel of record for Montefiore, and will promptly file a copy of this Notice of Removal with the Clerk of the Supreme Court of New York, County of Bronx.

CONCLUSION

WHEREFORE, the above-described action now pending against Aetna in the Supreme Court of New York, County of Bronx is removed to the United States District Court for the Southern District of New York.

Dated: New York, New York
September 20, 2021

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