

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MEMORIAL HERMANN HEALTH SYSTEM,

Plaintiff,

v.

C.A. No. _____

HEALTH CARE SERVICE CORPORATION,
A MUTUAL LEGAL RESERVE COMPANY,
d/b/a BLUE CROSS BLUE SHIELD OF
TEXAS,

Defendant.

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Memorial Hermann Health System (“Memorial Hermann”) files this Original Complaint against Defendant Health Care Service Corporation, a Mutual Legal Reserve Company d/b/a Blue Cross Blue Shield of Texas (“BCBS”).

1. NATURE OF THE ACTION

1. This case involves an insurance company prioritizing profits over patient well-being and its obligation to pay for emergency and subsequent care. After losing more than \$400 million on Affordable Care Act (“ACA”) Exchange plans in Texas in 2014, and over \$300 million on individual market plans in Texas in 2015, BCBS improperly sought to shift some of these losses to Memorial Hermann by wrongly denying hundreds of valid Blue Advantage and MyBlue Health claims (the “BAV Claims”) for emergency services and post-stabilization care. Although BCBS resolved the bulk of its misconduct through a lawsuit Memorial Hermann filed in 2017¹, BCBS now again has refused to properly reimburse Memorial Hermann for BAV

¹ This case is related to *Memorial Hermann Health System v Health Care Service Corp.*, Case No. 4:17-CV-2661, that was pending before Judge Sim Lake in the United States District Court for the Southern District of Texas.

Claims. As a result of BCBS's continuing improper conduct, Memorial Hermann has suffered more than \$3 million in damages.

2. In late 2013, BCBS agreed to pay Memorial Hermann at an agreed rate for healthcare provided to BCBS's members who came to Memorial Hermann with emergent medical conditions (the "BAV HMO Agreement"). In accordance with the BAV HMO Agreement, between January 2014 and June 2015, BCBS generally paid Memorial Hermann for the care it rendered to thousands of BAV members, whether in the emergency room or upon admission to the hospital for emergent or continuing treatment. However, after BCBS suffered more than \$400 million in losses on the ACA Exchange in Texas in 2014, BCBS decided in mid-2015 to begin breaching the BAV HMO Agreement in earnest and as a result increased its denials for anything beyond what BCBS deemed "emergency care", on the basis that Memorial Hermann is "out-of-network" for BAV members.

3. BCBS's belated position was that Memorial Hermann must force BCBS BAV members who came to Memorial Hermann in an emergent condition out of a Memorial Hermann facility, requiring them to leave Memorial Hermann and transfer to an "in-network" hospital so that BCBS can save money, even if it disrupts the patient's continuity of care, endangers patient safety, and subjects Memorial Hermann to potential liability for improper transfers or medical malpractice.

4. As a result of BCBS's change in position in mid-2015, BCBS substantially increased its denials of payment for anything beyond what BCBS unilaterally deemed to be "emergency" care, going from approximately one such denial per month, on average, to approximately 40 such denials per month, on average. If, as BCBS insisted, the BAV members had been transferred to an in-network facility for continuing care, BCBS still would have had to

pay the in-network provider for those services. However, under BCBS's view of the world, BCBS did not have to pay anything at all and could shift the cost of continuing related medical care to its own BAV members (by denying benefits) or to Memorial Hermann (by denying claims).

5. BCBS's improper claim denial policy not only financially injured Memorial Hermann and unjustly enriched BCBS, but it also endangered patient care and safety, as shown in one example of BCBS's denials from the prior lawsuit: patient A suffered an open fracture of her lower left leg, a closed right lower leg fracture, broken ribs, and internal bleeding. Patient A was first taken to another hospital, but the physician at that hospital decided to transfer patient A to a Memorial Hermann emergency room for trauma care, declaring the transfer a medical emergency. As a medical emergency, Memorial Hermann was not permitted to check insurance benefits or redirect patient A to another facility based on insurance coverage. Upon arrival at Memorial Hermann, patient A went directly to the operating room for surgery. Following surgery, patient A required continuing care and was admitted to the Memorial Hermann hospital for that continued care. BCBS was notified that patient A was being admitted, and did not deny coverage. When it was medically appropriate, patient A was discharged from the hospital after 14 days.

6. Memorial Hermann provided \$261,156.30 in medical treatment to patient A. BCBS, however, paid just \$4,672.35, claiming that patient A should have been transferred to a BCBS "in-network" hospital right after coming out of surgery. BCBS apparently believed that, even though BCBS did not object to Memorial Hermann treating patient A at the time, Memorial Hermann should have forced patient A from the hospital right after surgery -- regardless of the physician's or patient's belief about what was in the patient's best interests, and even though

such a transfer would have been nearly impossible because physicians generally are unwilling to accept transfer of trauma patients because they require continuity of care at the treating facility. It clearly was not in patient A's best interests to be transferred right after such significant surgery, but BCBS apparently believes that Memorial Hermann should forcibly discharge BAV patients like patient A -- even against physician's recommendations or the patient's will -- once the patient has been "stabilized" in the emergency room. BCBS's after-the-fact denial policy is premised on the notion that reduced financial cost to BCBS is more important than patient well-being.

7. Memorial Hermann sued BCBS in 2017, ultimately seeking more than \$30,000,000.00 in damages for BCBS's improper claim denials and breaches of the BAV HMO Agreement. The parties resolved that lawsuit in 2019.

8. BCBS's continued breaches of the parties' agreement and failures to comply with Texas law have cost Memorial Hermann more than \$3 million in additional health care reimbursements for approximately 100 additional BAV members who came to Memorial Hermann with emergency conditions, which were not part of the prior lawsuit.

2. PARTIES

8. Memorial Hermann is a Texas corporation with its principal place of business in Houston, Harris County, Texas. Memorial Hermann can be notified through its attorneys, Smyser Kaplan & Veselka, L.L.P., 717 Texas Ave., Suite 2800, Houston, Texas, 77002.

9. Defendant Health Care Service Corporation, a Mutual Legal Reserve Company d/b/a Blue Cross Blue Shield of Texas is a corporation with its principal place of business in Illinois. BCBS can be served through its registered agent, Corporation Service Company, 211 E. 7th St., Suite 620, Austin, TX 78701-3218.

3. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

11. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Memorial Hermann's claims occurred in this district.

4. FACTUAL BACKGROUND

12. Memorial Hermann is entitled to reimbursement for the unpaid BAV Claims. BCBS properly paid the BAV claims for 18 months before losing hundreds of millions of dollars in its Exchange plans. Memorial Hermann filed a lawsuit and resolved BCBS's misconduct. BCBS, though, has again refused to properly pay BAV Claims for approximately 100 additional patients.

A. Relationship between Memorial Hermann and BCBS.

13. Memorial Hermann is the largest non-profit, charitable healthcare system in Southeast Texas. BCBS offers, issues, and administers health insurance plans.

14. Persons covered under insurance policies issued or administered by BCBS and its affiliates ("insureds") receive health care services at Memorial Hermann. The insurance benefits are governed by a number of different types of agreements between the individual patients and BCBS or an employer health plan administered by BCBS.

15. Separate from these insurance policies between BCBS and its insureds, BCBS and Memorial Hermann entered into agreements that govern compensation and billing for BCBS's Health Maintenance Organization ("HMO") and Preferred Provider Organization ("PPO") Program Participants. These agreements provide BCBS with a contractual discount from

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.