

COVID-19 Testing Provider May Amend Claims Against Aetna in Calif. Reimbursement Action

SAN FRANCISCO — A California federal judge has dismissed an action accusing Aetna Health of California of wrongly refusing to reimburse a provider for COVID-19 testing services, ruling that it has no private right of action to enforce claims under the CARES Act and Families First Coronavirus Response Act (FFCRA).

However, the judge allowed the provider to amend its claims for violation of the Racketeer Influenced and Corrupt Organizations Act and promissory estoppel.

Saloojas Inc. operated seven specimen collection sites to provide COVID testing and is outside Aetna's provider network. Saloojas alleges Aetna improperly denied most of its claims for reimbursement for providing COVID testing to members of Aetna's insurance plans and Aetna-administered employer plans.

According to Saloojas, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Families First Coronavirus Response Act (FFCRA), Aetna must reimburse "an amount that equals the cash price for such COVID Testing services as listed by the [out-of-network] provider on its public internet website or to negotiate a rate/amount to be paid that is less than the publicized cash price," "without the imposition of cost-sharing, prior authorization or other medical management requirements."

In a putative class action, Saloojas asserted claims under Section 3202(a)(2) of the CARES Act and Section 6001 of the FFCRA; Section 502(a)(1)(B) of the Employee Retirement Income Security Act; RICO; promissory estoppel; and California's Unfair Competition Law.

Aetna moved to dismiss all claims for failure to state a claim. Judge Corley granted the motion without leave to amend as to the CARES Act and FFCRA claims, noting there is no private right of action to enforce the claims by requiring Aetna to pay Saloojas' posted cash price.

Next, the judge dismissed without leave to amend the ERISA claims, finding Saloojas failed to allege the existence of any specific ERISA-governed plan or the language of any specific assignment. Rather, Saloojas has only alleged that "many of the members of plans either insured or administered by Aetna who received COVID testing services from Plaintiff executed assignment of benefits documents."

Saloojas also argued that the CARES Act and FFCRA "have given out-of-network providers of COVID testing services standing to sue self-funded health plans subject to ERISA," "obviating the need for a provider to obtain a specific assignment of ERISA benefits from a member of a health plan subject to ERISA to be entitled to seek reimbursement from the health plan for COVID testing services."

Judge Corley found, however, that Saloojas failed to point specific text in either statute purporting to amend ERISA's requirements for statutory standing. Further, the CARES Act and FFCRA's references to ERISA suggest that they incorporate and harmonize with ERISA's enforcement scheme, the judge added.

Next, the judge found Saloojas failed to meet RICO's heightened pleading requirements, as required by Rule 9(b). Saloojas failed to allege facts supporting a reasonable inference that Aetna engaged in mail fraud, wire fraud, or embezzlement, or facts giving Aetna fair notice of the basis for its RICO claim, Judge Corley held. Further, Saloojas did not "detail with particularity the time, place, and manner of each act of fraud," "the role of each defendant in each scheme," and "why the statement or omission complained of was false and misleading," the judge ruled.

However, Judge Corley granted Saloojas leave to amend the RICO claim, explaining "it is not absolutely clear that the defect could not be cured with additional facts."

The judge also dismissed the promissory estoppel claim with leave to amend, ruling the complaint does not allege facts supporting a reasonable inference that Aetna made a clear and unambiguous promise to pay Saloojas a certain amount for COVID testing its insureds.

Finally, as to the UCL claim, Judge Corley found Saloojas failed to allege facts supporting a reasonable inference that Aetna made a clear and unambiguous promise to pay Saloojas a certain amount for COVID testing its insureds. The judge dismissed the claim with leave to amend.

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