



American Medical Association v. WellPoint, Inc., 756 F.3d 1222 (11th Cir. 2015)

Topics Covered: Payment Issues (for Physicians), Managed Care Payments and Usual, Customary and Reasonable Payments

Outcome: Neutral

Issue

The issue in this class action lawsuit was whether WellPoint systematically understated its calculation of “usual, customary, and reasonable” (UCR) payments for out-of-network services.

AMA Interest

The AMA supports fair policies and practices regarding payment for physician services.

Case Summary

On March 25, 2009, the Litigation Center, along with several state medical societies and two individual physicians, sued WellPoint and its various subsidiaries. The complaint alleged that WellPoint had systematically miscalculated the "usual, customary and reasonable" (UCR) amounts paid to out-of-network physicians. The miscalculations arose from WellPoint's use of the databases maintained by Ingenix, a subsidiary of United HealthCare. The complaint asserted violations of ERISA, RICO, and the Sherman Antitrust Act.

On August 19, 2009, the Judicial Panel on Multidistrict Litigation consolidated, for pretrial purposes, all lawsuits that had been filed or may be filed in the federal courts, anywhere in the country, against WellPoint, which challenge its use of the Ingenix databases to calculate UCR payments. The case was assigned to the United States District Court for the Central District of California. The Central District of California has dismissed most of the counts on various technical bases, and on September 3, 2014 the court denied the plaintiffs' motion for class certification.

On July 25, 2012, during the pendency of the suit in the Central District of California, a judge from the United States District Court for the Southern District of Florida ruled that a settlement agreement reached before him years earlier in *In re Managed Care Litigation*; MDL No. 1334, barred the prosecution of the claims of the physician plaintiffs and of the plaintiff medical associations, and it held the physician plaintiffs and certain of the plaintiff medical associations in contempt of court. The Central District of California then dismissed those claims.

Certain of the physicians and medical associations appealed the ruling of the Southern District of Florida, insofar as it addressed claims brought under ERISA and the antitrust laws. As a

result of that appeal, on June 18, 2014, the Eleventh Circuit ruled that the medical association claims based on ERISA were viable, and it reversed the dismissal of those claims. However, it affirmed the dismissal of the claims founded on antitrust law violations. On September 16, 2014, the Southern District of Florida, by agreement, vacated its contempt order of July 25, 2012.

On November 11, 2014, the medical associations of California, Georgia, and Connecticut, as well as three individual physician plaintiffs, petitioned the Supreme Court for certiorari to review the dismissal of the antitrust law claims. The petition for certiorari was denied on February 23, 2015.

In December 2015, the medical associations settled their claims against WellPoint. As a result of this settlement, \$10,000 was paid to the AMA Foundation and to each of the charitable foundations associated with the state medical societies that participated in this litigation. The public statement regarding the settlement is as follows:

SETTLEMENT REACHED IN LAWSUIT BETWEEN PHYSICIAN AND PROVIDER ASSOCIATIONS AND ANTHEM, INC.

Seven associations representing physicians, chiropractors, podiatrists and psychologists agreed today with Anthem, Inc., to resolve almost seven years of litigation that challenged the validity of how the health insurer determined payments for certain medical claims. Anthem and the associations have agreed that a mutually beneficial settlement would be preferable to continued protracted legal proceedings.

The litigation involved allegations related to a database operated by Ingenix, a former unit of UnitedHealth Group, which was employed by many insurers when determining reimbursement rates for health professionals who provided out-of-network care to patients.

Anthem cut ties long ago with the now-defunct Ingenix database. The settlement therefore addresses the remaining need to provide patients with tools and information to help them make decisions about choosing care from providers who are in-network or out-of-network with Anthem's various insurance networks and plan products. Anthem is upgrading its provider finder tool as part of a national effort to improve patient access to accurate and comprehensive provider directories, and has committed to keep its provider finder tool (or a further improved provider finder tool) in place. Anthem also agreed to provide a contribution to each of the charitable foundations associated with the seven associations.

AMA Involvement

The AMA was a named plaintiff in the case. Also, the Litigation Center filed an *amicus* brief in the Supreme Court in support of the *certiorari* petition.

Supreme Court brief