



Recently, Ernie Clevenger posted in his newsletter an update regarding the case of Medical University Hospital Authority/Medical Center of the Medical University of South Carolina v. Oceana Resorts LLC, D.S.C., No. 2:11-cv-01522-DCN, 3/2/12), wherein a benefit plan successfully prohibited assignment of benefits by a participant to a provider, despite the execution of an assignment of benefits form by the patient, and the in-network status of the provider. As a result of this recent development, there has been an influx of inquiries to the Phia Group Consulting ("PGC") team, inquiring as to whether it makes sense - in an effort to combat excessive charges and force participants to have "some skin in the game" - to prohibit assignment of benefits in all plan documents.

If this were to occur, we would likely see an influx in balance billing by providers. Once consumers are faced with thousands of provider bills, each weighing in for thousands of dollars apiece, one of two things will happen. Either (1) the public will be made aware of excessive pricing, inequity in provider charges, the government will impose laws meant to control pricing by providers and the public will push back against providers by "shopping around" for reasonably priced providers, or, (2) laws will be passed requiring insurance carriers and benefit plans to allow assignment of benefits. Between you and me, in light of PPACA, #2 seems a lot more likely than #1.

Instead, I think plans are better off tethering the assignment (or lack thereof) to acceptance by the provider of assignment as consideration in full. In other words, rather than have an across the board prohibition, why not indicate that assignment is authorized only when the provider accepts assignment of benefits as consideration in full, and agrees to be limited by the same terms and provisions as the participant from whom assignment is received?

The case mentioned above adds fuel to my argument that a provider that accepts assignment of benefits is limited to the same rights and benefits as the participant from whom the benefits were assigned, a benefit plan can control if and how benefits are assigned by the participant as a condition of participation, and that a benefit plan can condition assign-ability of benefits to acceptance of assignment as consideration in full for services rendered.

Also worthy of note; the case involves claims for experimental / investigational services, excluded by the plan. I frequently compare claims that exceed the maximum payable amount to claims excluded by virtue of an illegal act. This case is an example of what I am talking about - The Plan will not be forced to pay excluded claims, regardless of assignment of benefits or in-network status of the provider.