

On July 1, MSSNY and other plaintiffs filed a class action complaint against United Healthcare and its subsidiary and affiliate companies (United) alleging that United has unlawfully refused to pay facility fees to physicians and other health care professionals who perform outpatient surgeries at accredited office based surgery (OBS) practices. The lawsuit was filed in the United States District Court Southern District of New York.

Most United plans allow United insureds to receive insurance benefits from in-network (INET) providers and out-of-network (ONET) providers. The lawsuit concerns United's handling of ONET claims, and alleges that United's refusal to pay facility fees to OBS practices violates the terms of United's plan documents, including the United plan's "Certificate of Coverage."

The Certificate of Coverage sets forth the basic terms under which the United plan provides medical/surgical benefits. According to the complaint, United's standard Certificate of Coverage contains a lengthy list of "Covered Health Services," including "Surgery-Outpatient," which is defined in the Certificate as "surgery and related services received on an outpatient basis at a Hospital or Alternate Facility or in a Physician's office." In such cases, the Certificate states that the benefits not only include coverage for physician services, but also includes coverage for "facility charge and the charge for supplies and equipment." According to the complaint, the typical United Plan promises to pay for OBS facility charges, and makes no distinction between facility charges of OBS practices and facility charges of hospitals or other facilities.

According to the complaint, until recently, United honored these plan terms. When a United insured received medically necessary ONET outpatient surgery, United caused the insured's United Plan to make payment for the surgeon's services, and another for the facility fee, and the facility fee was paid regardless whether the entity performing the outpatient surgery was a hospital, ambulatory surgery center ("ASC") or an OBS practice. More recently, however, United has adopted a uniform policy to refuse to pay OBS facility fees, despite the fact that the overwhelming majority of United plans have not changed the terms of the plan's Certificate of Coverage with respect to ONET outpatient surgeries. The complaint refers to the policy as United's "Uniform Refusal to Pay."

The class action complaint alleges that:

- United has systematically violated the terms of the United Plans by adopting its Uniform Refusal to Pay and, among other violations of law;
- United has systematically violated ERISA by failing to honor plan terms and adopting the Uniform Refusal to Pay that violates plan terms.

MSSNY President Malcolm Reid, M.D. stated that United's Uniform Refusal to Pay is unfair to the many MSSNY physician members who operate OBS practices and the patients they serve, by failing to adequately reimburse OBS practices for the expenses incurred to operate the operating room. In the end, the patients are hurt when the OBS practice is not reimbursed for its facility costs, said Dr. Reid.

The other plaintiffs in the lawsuit include the Society of New York Office Based Surgery Facilities ("NYOBS") and Podiatric OR of Midtown Manhattan, P.C. MSSNY and NYOBS are seeking injunctive and declaratory relief on behalf of their respective members and patients.

Among the relief requested by the plaintiffs, it is requested that:

- the court issue an order to require United to reprocess all denied OBS claims in compliance with ERISA and the plan terms; and
- to notify all Class Members and all MSSNY and NYOBS members of the right to resubmit claims for services provided through an OBS practice for which facility fees were not submitted in which such facility fees should be covered under the plan terms, and ordering United to reprocess such claims in compliance with ERISA and the plan terms.

The firms Zuckerman Spaeder, LLP and Buttaci & Leardi, LLC represent MSSNY and the other plaintiffs in this action. MSSNY wishes also to thank its general counsel Kern Augustine, P.C. for its advice and counsel." "

If you have any questions concerning the litigation, or have issues relating to coverage for OBS fees, please contact Anant Kumar at Zuckerman Spaeder, LLP at akumar@zuckerman.com or by telephone at 646-746-8841."