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Reuters Legal and WestLaw published Kaufman Dolowich article, "Second Assignments in Health Litigation: Can Medical Debt Collectors Sue?" written by Abbye Alexander, Christopher Tellner, and Henry Norwood, Esq.s

January 2, 2024 - A routine practice in health care practices is the assignment of a patient's rights to benefits ("AOB") under a health plan to the patient's provider. Often, medical providers do not want to deal with the process of collecting unpaid medical bills from their patients' insurers, so providers give a third party (often a collections agency or a law firm) the right to collect the amounts owed. This is done through a second assignment.

The first assignment is given by the patient to the provider, granting the provider the right to collect from the insurer. The second assignment is then given by the provider to the third-party collector. This is a common practice among debt collectors. However, in the health care context, courts across different jurisdictions have dealt with second assignments differently. Some jurisdictions ban the practice outright. This can lead to providers having to deal with collections from their patients themselves and result in a big win for insurers. Understanding how jurisdictions differ on this issue can aid insurers, providers, patients, and third-party collectors navigate second assignments.

ERISA framework

In health plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), ERISA § 502(a)(1)(B) only allows a "participant or beneficiary" to recover plan benefits. Because health care providers are neither participants nor beneficiaries, providers can only recover under a patient's health plan through an AOB. From that point, before any other party can recover these same benefits under a patient's health plan, the provider must execute an AOB with that third party. Whether this is permitted is a question based on jurisdiction.

Second assignments not permitted

The 9th U.S. Circuit Court of Appeals ruled on the second assignment issue in the 2000 case of Simon v. Value Behavioral Health, Inc.In that case, hundreds of patients assigned their claims to health plan benefits to a small number of providers, who in turn assigned the rights to the plaintiff, an attorney seeking to collect from the defendant-insurers on the alleged underpaid claims.

The plaintiff sued the defendants on the claims. The defendants moved to dismiss, arguing the plaintiff lacked standing to assert claims as a second assignee on behalf of the patients. The district court agreed with the defendants and the 9th Circuit affirmed. Specifically, the 9th Circuit reasoned that allowing second assignments would open the floodgates to endless assignments and turn a patient's health plan rights into a tradable commodity.

The 6th U.S. Circuit Court of Appeals ruled along the same lines as the 9th Circuit in prohibiting second assignments to medical collection agencies in the 2001 case, Simon v. Belwith Int'l, Inc., and the 2004 case, COB Clearinghouse Corp. v. Aetna Healthcare, Inc.The Central District of California has also followed the 9th Circuit in prohibiting second assignments in the 2022 cases of ABC Servs. Group, Inc. v. Health Net of Cal., Inc., et al. and ABC Servs. Group, Inc. v. Aetna Health & Life Ins. Co., et al.

Further, the Eastern District of New York has prohibited second assignments in the 1996 case, Clinical Partners, Inc. v. Guardian Life Ins. Co. of Am.

The bankruptcy exception

The 9th Circuit reaffirmed the same holding in the 2022 case of Bristol SL Holdings, Inc. v. Cigna Health & Life Ins. Co. This case featured a typical second assignment factual layout, but with the twist that the medical provider and first assignee had filed for bankruptcy and the second assignee obtained the rights of the assignor-patients through the bankruptcy proceeding.

When considering whether the second assignment should be permitted in this context, the 9th Circuit raised concerns that barring such assignments could result in insurers attempting to drive health providers into bankruptcy, knowing this would extinguish the claims assigned to the providers from their patients. In this limited context, the 9th Circuit held that second assignments are valid when the second assignee obtains the rights held by the first assignee in a bankruptcy proceeding.

The agency exception

A second, limited exception has been found in the Central District of California, in the 2023 case of Healthcare Ally Management of Cal., LLC v. Aetna Life Ins. Co. In this case, the court found the plaintiff, a company that purportedly worked with providers to ensure the providers receive proper compensation for services in order to continue operating, was not clearly a debt collector and appeared to be an agent of the provider. This was particularly true because the provider retained a financial interest in the outcome of the litigation despite assigning its patients' rights to the plaintiff.

For these reasons, the Central District found the plaintiff was not barred from suing for plan benefits as a second assignee. This conclusion was also reached by the Central District of California in the 2023 case, Healthcare Ally Management of Cal., LLC v. Space Exploration Tech. Corp.

Importantly, whether the agency exception applies will generally turn on the terms of the agreement between the provider and the third party bringing the lawsuit if the agreement is before the court to consider. This point was made clear in another 2023 case before the Central District of California, Healthcare Ally Management of Cal., LLC v. Stroock and Stroock and Lavan, LLP. In this case, the court ultimately rejected the second assignment. Upon examining the agreement between the plaintiff and the medical provider, the court reasoned that the plaintiff was more akin to a medical debt collector than an agent of the provider, barring the second assignment.

Second assignments permitted

The 11th U.S. Circuit Court of Appeals has expressly permitted second assignments in the health plan context, even when the second assignee is a debt collector outside the bankruptcy or agency settings. In the 2015 case, Gables Ins. Recovery Inc. v. Blue Cross & Blue Shield of Fla. Inc., a patient assigned their rights to recover health plan benefits to their provider, who, in turn, assigned the rights to a collection agency. The collection agency sued the plan to recover amounts allegedly owed for the patient's treatment.

On appeal of the district court's dismissal, the 11th Circuit was asked to determine whether a collection agency had standing to enforce a patient's health plan rights under ERISA via a second assignment. The court answered this question in the affirmative, reasoning that, while ERISA does not expressly permit second assignments, it also does not prohibit second assignments. On this basis, the 11th Circuit permitted the second assignment.

The 5th U.S. Circuit Court of Appeals has also held that second assignments are permitted, even when the second assignee is a medical collection agency in the 2023 case, Tango Transport v. Healthcare Fin. Servs. LLC.

Conclusion

With courts reaching different results across the country, insurers, insureds, providers, and medical collection agencies should be aware of their jurisdiction's rulings on the issue of second assignments. The practice of assigning benefits is pervasive, but re-assigning benefits may ultimately nullify the right to recover plan benefits depending on the jurisdiction.

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