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Take the Health Care or Leave It: Is Your Assignment of Benefits an Unenforceable Adhesion Contract?

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In this article, the authors discuss the powerful adhesion contract defense, which can invalidate an assignment of benefits underlying a healthcare provider's standing and result in dismissal of a provider's lawsuit.

In the healthcare insurance realm, an assignment of benefits (AOB) is the link in the chain tethering a patient's legal rights to reimbursement from their insurer to the patient's healthcare provider. Generally, a valid, executed AOB is necessary for a healthcare provider to sue a patient's insurer for compensation in health plan litigation. Because of this, ensuring the provider's AOB is valid is of absolute importance to providers and their counsel. Frequently raised defenses by insurers to provider suits for payment on behalf of patient-insureds include that the AOB is invalid due to the existence of an anti-assignment clause in the health plan or that the scope of the AOB does not include assignment of the patient's right to sue the insurer. However, a less common defense has been raised in certain jurisdictions with mixed success.

This is the adhesion contract defense. This defense, which has been raised in other contexts for years, essentially argues that the

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circumstances surrounding execution of the AOB were unfair to the patient and exerted undue pressure to sign, which should operate to deem the AOB invalid. While unorthodox, the adhesion contract defense is powerful because it can invalidate the AOB underlying the healthcare provider's standing and result in dismissal of the provider's lawsuit. Understanding the current state of the law regarding this defense, as well as the AOB execution process, is key to all parties in health plan litigation to navigate potential opportunities or pitfalls offered by the AOB adhesion contract argument.

AOBS IN THE PRACTICE OF HEALTHCARE

When a patient steps into a health provider's office seeking care, certain steps generally take place prior to the receipt of care. The provider first collects the patient's demographics and health insurance information, in addition to requesting signatures on several other pre-printed forms. Commonly, the provider will also request that the patient sign an AOB form, permitting the provider to communicate with the patient's health insurer, seek reimbursement directly from the insurer, and assigning the patient's legal right to sue for plan benefits.

Once the health services are provided to the patient, the patient or their provider will submit claims for reimbursement to the insurer. After the insurer receives the claims for payment, the insurer will consider and render a decision regarding the requested reimbursement by applying the terms of the patient's health plan to the services rendered. Without transmission of a valid AOB along with the claim for payment, the insurer will generally only engage and provide payment to the patient–not the provider. In addition to this pre-suit impact, AOBs also play a significant, crucial role once suit is filed on the matter of the health provider's standing.

STANDING TO SUE FOR A PATIENT'S HEALTH INSURANCE BENEFITS

Health plan participants and beneficiaries are generally authorized to sue their insurers to recover benefits due under a health plan.[1] Healthcare providers are generally not authorized to sue their patients' insurers on their own behalf, even if they are entitled to direct payment from the insurers because the providers are not health plan participants or beneficiaries.[2] For a provider to sue, they must do so through an AOB.[3] When a healthcare provider pursues the claims of a patient via an AOB, the provider stands in the shoes of the patient,

with the ability to raise the same claims and being subject to the same defenses as the patient.[4]

When a provider enters into a valid AOB with a patient, the provider obtains legal standing to sue the patient's insurer.[5] If the court determines that the patient's health plan permits assignments of benefits, the provider may sue "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."[6] Thus, a valid, enforceable AOB is the provider's key to filing a lawsuit against their patient's insurer for plan benefits. If the AOB is determined to be unenforceable, the provider will lack standing to sue for benefits. This underlies the value of contract defenses targeting the validity of a provider's AOB, such as the contract of adhesion defense.

CONTRACTS OF ADHESION

An adhesion contract is a contract which, in the time leading up to its signing by the party to be bound, affords the party with weaker bargaining power, no ability to negotiate, and no meaningful choice regarding the terms of the contract.[7] If the circumstances surrounding the signing of a contract are unfair to the point of being oppressive, courts may deem the such agreements adhesion contracts and may find such contracts unenforceable. A finding that a contract is an adhesion contract does not necessarily render the contract invalid, but such a finding generally results in a secondary analysis as to whether the adhesion contract is so unfair that it would be inequitable to enforce. Whether a contract is an unenforceable adhesion contract is generally a question of law for the judge to determine and the defense is often raised at the motion to dismiss stage of litigation.

As an issue of state common law, different states have developed different tests to determine whether a contract is an adhesion contract. Most states have developed some iteration of the following factors that must be established to successfully argue a contract is an adhesion contract:

(1) The contract is prepared on a standard, pre-drafted form;

(2) The contract is only prepared by one of the parties;

(3) The contract is offered by one party to the other on a take it or leave it basis; and

(4) The party who drafted the contract possess superior bargaining power than the non-drafting party.[8]

If in considering these factors, a court deems the circumstances surrounding the signing of a contract were oppressive enough to the party with no bargaining power, the court may invalidate the contract.

The adhesion contract defense is not a new argument. The defense has been raised for years most commonly in opposition to the enforcement of arbitration clauses in form contracts between consumers and businesses. Notably, the traditional framework for this defense involves the party with lesser bargaining power raising the adhesion contract defense against the party with greater bargaining power. More recently, however, the adhesion contract defense has been attempted in health plan litigation to attempt to invalidate AOBs between patients and providers, arguing the circumstances surrounding the AOB signing were unfair and oppressive to the patients. Unlike in other contexts, however, in some health plan litigation cases, the adhesion contract has actually been raised by the patient's health insurance company–a nonparty to the alleged adhesion contract–seeking to invalidate the AOB as unfair to the patient. The adhesion contract defense has been attempted in this context with mixed results.

WHEN IS AN AOB A CONTRACT OF ADHESION?

One of the earliest appellate-level cases involving the adhesion contract defense in an AOB health litigation context is *Hoiland v. Minneapolis Children's Med. Ctr., et al.*[9] The case involved a minor patient who suffered injuries as a result of a motor vehicle accident. The patient's father admitted her to a children's hospital where he was presented with a series of forms to fill out on her behalf, including an AOB authorizing the hospital to seek health plan and other applicable insurance policy benefits. The patient's health insurer made ongoing payments toward the patient's care until it was discovered that the patient was also covered by an auto insurer, prompting the health insurer, the hospital, and the patient's father to each seek to recover the amounts owed under the auto policy. The patient's father filed a declaratory judgment action seeking a judgment that the auto policy proceeds should be paid to him in a trust to apply toward the patient's future care. The trial court agreed with the patient's father and the hospital and health insurer appealed.

On appeal to the Minnesota Court of Appeals, the plaintiff-patient's father argued that the auto policy proceeds should not be paid to the hospital because the AOB he signed was a contract of adhesion as he had no ability to negotiate the terms of the AOB and, therefore, the AOB was unenforceable and the hospital had no right to payment under the auto policy. The appellate court disagreed, finding that, despite the fact that the

AOB was on a pre-printed form, the plaintiff failed to demonstrate he had no ability to negotiate the terms of the AOB or that the AOB was offered by the hospital on a take it or leave it basis, beyond merely making these bare allegations. On this basis, the appellate court reversed and found the AOB was not an adhesion contract.

The *Hoiland* case is important because the appellate court did open the door to the viability of the adhesion contract defense in the health plan litigation context, upon a proper showing of the necessary elements by the party raising the defense. Notably though, *Hoiland* featured the defense in its traditional context – raised by the party who signed the alleged adhesion contract. The defense would only later be raised beyond this context.

In *Dameron Hosp. Assoc. v. Geico Indem. Co.*,[10] the U.S. District Court for the Eastern District of California considered a case turning on the question of whether AOBs between several patients and a health provider were unenforceable contracts of adhesion as alleged by the patients' insurers. The court considered two consolidated cases involving five patients who were involved in separate motor vehicle accidents. The patients were admitted to the plaintiff-hospital for emergency medical treatment. Prior to receiving care, the patients all signed AOBs with the hospital, assigning the patients' rights to recover plan benefits from the patients' insurers. The AOBs were presented to the patients prior to the receipt of services on pre-printed forms and were included within a broader document referred to as a "condition of admission."

After services were rendered to the patients, the hospital submitted claims to the patients' insurers for payment. Despite the AOBs, the insurers reimbursed the patients directly, prompting the hospital to file suit for reimbursement. The insurers successfully moved to dismiss the initial complaint arguing, in part, that the AOBs were unenforceable contracts of adhesion. The court dismissed the initial complaint without prejudice, prompting the hospital to file an amended complaint. The insurers again moved to dismiss on the adhesion contract basis. The court agreed with the insurers, finding that the patients had no bargaining power and no meaningful choice but to accept the terms of the pre-printed AOBs because they could not reasonably negotiate a contract when in need of emergency care, neither could the patients be expected to decline the AOB and seek out another hospital under urgent circumstances. The court then determined that a reasonable patient would not expect to assign their benefits under such circumstances, rendering the AOBs unenforceable contracts of adhesion. The court dismissed with prejudice.[11]

The U.S. District Court for the Middle District of North Carolina also considered the AOB adhesion contract issue in *Exact Sciences Corp. v.*

Blue Cross & Blue Shield of North Carolina.[12] The case involved numerous colorectal cancer screening tests provided by the plaintiff-provider to over five-hundred patients, which were denied by the defendant-insurer as an investigational or experimental procedure. The provider routinely entered into AOBs with its patients on pre-printed forms prior to the provision of care. The provider sued the defendant-insurer for payment of the tests provided per the terms of the patients' health plans. The insurer moved to dismiss the complaint, arguing, in part, that the AOBs between the provider and patients were unenforceable contracts of adhesion.

Rather than consider the elements of the adhesion contract defense, the court instead rejected the ability of the insurer to raise the defense in relation to a contract to which it was not a party. Thus, the Middle District of North Carolina, unlike the Eastern District of California, did not permit the adhesion contract defense to be raised outside of its traditional context and determined the defense was only available to a party to the alleged adhesion contract. The court denied the insurer's motion to dismiss on the adhesion contract argument.

CONCLUSION

The adhesion contract defense has only been raised in the AOB health benefits context in recent years in a few jurisdictions. Undoubtedly, the party raising the defense must make a sufficient showing that the circumstances surrounding the AOB signing satisfy the state-law elements of an adhesion contract and were sufficiently unfair to deem the AOB unenforceable. Beyond the sufficiency of the movant's argument though, some states may permit the defense to be raised by non-contracting parties, such as a patient's insurer, while others may limit the defense to the contracting parties. Monitoring jurisdictions for emerging caselaw in this area can inform providers, patients, insurers, and counsel regarding the adhesion contract defense which, when applicable, can be a powerful tool.

NOTES

1. See 29 U.S.C. § 1132(a)(1).

2. See Grasso Enters., LLC v. Express Scripts, Inc., 809 F.3d 1033, 1040 (8th Cir. 2016).

3. Id. at 1039-41.

4. Connecticut State Dental Assoc. v. Anthem Health Plans, Inc., 591 F.3d 1337, 2009 WL 512636, at *12 (11th Cir. 2009).

5. See Cromwell v. Equicor-Equitable HCA Corp., 944 F.2d 1272, 1277 (6th Cir. 1991).

6. 29 U.S.C. § 1132(a)(1)(B).

7. See Wheeler v. St. Joseph Hospital, 63 Cal. App. 3d 345, 356 (1976).

8. Anderson v. Soap Lake School District, 191 Wash. 2d 343, 375 (2018); Application of Whitehaven S.F., LLC v. Spangler, 45 F. Supp. 3d 333, 351 (S.D. N.Y. 2014).

9. 457 N.W.2d 241 (C.A. Minn. 1990).

10. 2025 WL 1743895 (E.D. Cal. 2025).

11. A factually similar suit also resulted in a dismissal with prejudice in favor of an insurer arguing an AOB was an unenforceable contract of adhesion in Dameron Hosp. Assn. v. AAA N. Cal., Nev. & Utah Ins. Exch. (AAA) (2022) 77 Cal. App. 5th 971, 992-93. Further, the Central District of California rejected the AOB adhesion contract defense when it was not properly supported by the movant by analyzing the circumstances surrounding the AOB signing in Dual Diagnosis Treatment Ctr., Inc., et al. v. Blue Cross of California, 2016 WL 6892140, *14 (C.D. Cal. 2016).

12. 2017 WL 1155807 (M.D. N.C. 2017).