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Court Urged Not To Ax Underpayment Suits Against Cigna

By **Adam Lidgett**

Law360 (June 26, 2020, 6:47 PM EDT) -- A behavioral health patient's mother and a group of health providers have urged a California federal court not to toss their proposed class actions claiming a Cigna unit colluded with a cost-containment middleman to underpay for out-of-network mental health and addiction care.

Various behavioral health providers and a woman identified only as RJ — who says she was stuck with steep bills for her son's behavioral health treatment — on Thursday opposed bids to dismiss their suits accusing the insurer of working with Viant Inc. to cheat Cigna customers and health providers out of full payment for out-of-network mental health and addiction treatment.

While Cigna Behavioral Health — a Cigna Corp. unit that processes the insurer's mental health and addiction treatment claims — had argued that it never promised to fully fund out-of-network treatment, the plaintiffs said that argument was a mischaracterization of their complaints. The providers and RJ said they didn't actually allege the insurer had to cover 100% of a provider's charges.

RJ also defended her Employee Retirement Income Security Act and Racketeer Influenced and Corrupt Organizations Act claims against Viant, even though Viant said those claims were **"too vague" to withstand scrutiny.**

"Indeed, Viant is incentivized to negotiate the lowest possible rate through a compensation mechanism that allowed it to keep the difference between the target rate given to it by Cigna, and the negotiated rate it was ultimately able to pay to the provider," RJ said. "In fact, the negotiation was nonexistent. It was a sham."

And while the provider lawsuit did not contain any ERISA claims, the providers urged the court not to toss their RICO claims against Viant, arguing that they "have alleged 'a common purpose to deceive' which is sufficient for a RICO enterprise."

The proposed class actions were filed in April along with two similar class actions targeting Viant and United Behavioral Health.

The lawsuits center on claims that CBH and United Behavioral Health worked with fellow defendant Viant to short payments for claims related to substance use and mental health treatment. A group of patients brought two of the suits, while a group of behavioral health providers launched the other two.

"The day of reckoning for them is coming and we are confident that the court is going to see that and help us put an end to the way that they are ripping off consumers, providers and employers all around this country," Matthew M. Lavin, an attorney for the plaintiffs, told Law360 on Friday.

Counsel for Viant declined to comment.

Representatives for Cigna did not immediately respond to requests for comment.

The plaintiffs are represented by Matthew M. Lavin and Wendy A. Mitchell of Napoli Shkolnik PLLC, and David M. Lilienstein and Katie J. Spielman of DL Law Group.

Cigna Behavioral Health Inc. is represented by William P. Donovan Jr., Joshua B. Simon, Warren Haskel and Dmitriy Tishyevich of McDermott Will & Emery LLP.

Viant Inc. is represented by Errol J. King and Carys Arvidson of Phelps Dunbar LLP, and David Dworsky and Moe Keshavarzi of Sheppard Mullin Richter & Hampton LLP.

The cases are RJ et al. v. Cigna Behavioral Health Inc. et al., case number 5:20-cv-02255, and Pacific Recovery Solutions et al. v. Cigna Behavioral Health Inc. et al., case number 5:20-cv-02251, both in the U.S. District Court for the Northern District of California.

--Additional reporting by Emily Brill. Editing by Jack Karp.

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