

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
MDL No. 1334
MASTER FILE NO. 00-1334-MD-MORENO
(Case No. 04-21206)

IN RE: MANAGED CARE LITIGATION

THIS DOCUMENT RELATES TO PROVIDER TRACK CASES

NORTH CAROLINA MEDICAL)
SOCIETY,)
)
Plaintiff,)
)
v.)
)
BLUE CROSS BLUE SHIELD OF)
NORTH CAROLINA,)
)
Defendant.)

JOINT TAG-ALONG STATUS REPORT

Pursuant to the Notice of Court Practice in MDL Tag-Along Actions and Order Closing Case for Statistical Purposes and Placing Matter in a Civil Suspense File dated May 27, 2004 (the "May 27 Order"), the parties submit the following Joint Tag-Along Status Report regarding the status of *North Carolina Medical Society v. Blue Cross Blue Shield of North Carolina*, which was transferred to this Court, pursuant to MDL Rule 7.4, by the Judicial Panel on Multidistrict Litigation (the "MDL Panel") from the United States District Court for the Eastern District of North Carolina, Western Division on May 24, 2004.

1.A. The Nature of the Claims Alleged in the Complaint

Plaintiff, the North Carolina Medical Society (“NCMS” or “Plaintiff”) filed its complaint in the Superior Court Division for the County of Wake, General Court of Justice of North Carolina on January 5, 2004, on behalf of its members and on its own behalf, alleging, *inter alia*, that Blue Cross Blue Shield of North Carolina (“BCBSNC” or “Defendant”) engaged in unfair and deceptive acts designed to delay, reduce and/or deny lawful reimbursement to physicians who are members of NCMS. (Compl. ¶ 1).

Plaintiff’s Complaint alleges that Defendant’s improper practices constitute violations of the North Carolina unfair trade practices statute, N.C. Gen. Stat. § 75-1.1, *et seq.*, the North Carolina Prompt Payment Law, N.C. Gen. Stat. § 58-3-225, and Civil Action for Obtaining Services Under False Pretenses, N.C. Gen. Stat. § 1-528.2, as well as common law claims including breach of contract accompanied by tortious interference and fraudulent acts.

Plaintiff’s complaint alleges that BCBSNC has employed a variety of means to effect the unfair and deceptive scheme alleged in the Complaint, including, but not limited to, the following alleged practices:

- systematically denying payment to NCMS members for medically necessary claims to achieve internal financial targets without regard for individual patients’ medical needs by, *inter alia*: (i) improperly employing software programs to automatically downcode procedures and/or deny payment to physicians without appropriate clinical review, oversight or justification; and (ii) improperly applying so-called “medical policies” or “guidelines” in a manner that BCBSNC knows is unreasonable for the purpose of denying payment to physicians for coverage for medically necessary treatments that have been rendered;

- failing to provide adequate staffing, staff training, or staff supervision to handle NCMS members' inquiries; routinely and unjustifiably failing to make payments to NCMS members within the time period prescribed by applicable provisions of North Carolina state law;
- requiring physicians to enter into one-sided physician agreements in order for them to provide medical care to patients who receive healthcare through Defendant's managed care plans; and
- making unreasonable demands, refunds or recoupments of "overpayments" of claims previously paid, even when the overpayment was based on Defendant's errors or other circumstances beyond the physician's control.

(Id. ¶ 3).

1.B. The Nature of the Defenses Asserted by the Defendant

Defendant asserts that Plaintiff lacks standing to bring this action on behalf of itself or its members. Defendant further asserts that Plaintiff's state law claims are preempted by the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*; and by the Federal Employee Health Benefits Act, as amended ("FEHBA"), 5 U.S.C. §§ 8901, *et seq.* Moreover, Defendant denies any and all imputations of fraudulent and/or improper conduct. Defendant notes that at the time this case was placed in the civil suspense file, the time for Defendant to file its response to the Complaint had not yet expired. Because Defendant has not yet responded to Plaintiff's Complaint, Defendant reserves the right to assert, at the appropriate time, all additional defenses and affirmative defenses.

