

Patients Seek Class Cert. In Cigna Benefits Underpayment Suit

By **Kellie Mejdrich**

Law360 (January 18, 2023, 7:06 PM EST) -- A proposed class of at least 8,000 patients who accuse health insurer Cigna and its billing contractor, MultiPlan, of colluding to underpay their out-of-network claims for substance use disorder treatments sought class status in their lawsuit alleging the companies' repricing scheme violated federal anti-corruption and benefits laws.

In a redacted **motion filing** docketed Tuesday, patients sought certification of a sweeping class of any member of a health benefit plan administered or issued by Cigna and governed by the Employee Retirement Income Security Act whose claims for out-of-network, intensive outpatient therapy for substance use disorders were similarly processed. The class certification motion was also filed under seal.

The proposed class said that for all claims at issue, Cigna verified to patients' providers on the phone that claims for mental health and substance use disorder treatments would be reimbursed at what's known as the "usual, customary and reasonable," or UCR, rate. The UCR rate is a composite rate based on similar providers in the same geographic area. But when claims were later priced using a methodology of MultiPlan subsidiary Viant, reimbursements were calculated using much lower rates, the proposed class said, in a scheme that they allege violated the Racketeer Influenced and Corrupt Organizations Act.

"This 'policy' allowed defendants to fraudulently and unlawfully take in millions of dollars of fraudulent 'savings' for which they charged millions of dollars of fees," the proposed class said. "This scheme has been continuous since at least 2015, continues in operation to this day, and will continue into the future without court intervention."

The proposed class also alleges Cigna and MultiPlan violated ERISA by processing claims in a way that conflicted with beneficiaries' own plan language, and that they engaged in self-dealing.

The proposed class definition also stipulated that plan members' claims contained specific billing and revenue codes that were submitted to Cigna, and that the member's plan used Cigna's program for pricing the claim known as the "maximum reimbursable charge," or MRC. The class definition also specified that the claims were priced using the methodology of Viant during the class period of Jan. 1, 2015, to the present.

"For the entire class, each and every healthcare benefits plan provided for the reimbursement out-of-network claims according to Cigna's MRC program," the proposed class said. "This program was represented as paying at a percentile of UCR and, in each claim at issue, this was a lie."

The proposed class said they had met the requirements for certification, including numerosity, commonality and typicality, and that certification was appropriate for claims under ERISA as well as RICO. Among the relief sought by the proposed class is declaratory and injunctive relief against MultiPlan and Cigna, as well as "reprocessing of claims under an appropriate UCR standard," according to the motion.

Class certification in the case comes after a California federal judge in **September** denied the bulk of two motions to dismiss RICO and ERISA claims from Cigna and MultiPlan. Tuesday's class certification motion contained significantly more information obtained through discovery, including through depositions of Cigna and MultiPlan employees, of how the alleged claim repricing scheme worked.

For example, according to the certification motion filing citing discovery material, Viant's methodology to price substance use disorder claims for years relied on data from Medicare enrollees, even though Medicare doesn't cover the intensive outpatient treatment service that was being claimed by Cigna members in the proposed class.

The proposed class of benefit plan participants in several employee health plans insured by Cigna, led by a woman identified only as RJ who says she was stuck with steep bills for her son's substance use disorder treatment, first filed suit in **April 2020**. Their complaint alleged that Cigna colluded with cost-containment middleman MultiPlan and Viant in a RICO enterprise to cheat patients on payments for out-of-network mental health and substance use disorder treatments.

"Plaintiffs and the thousands of putative class members were directly injured by Cigna and MultiPlan's unlawful scheme to underpay valid, medically necessary claims through the fraudulent and deceptive use of the Viant OPR methodology," the proposed class said in their motion.

Matt Lavin, attorney for the proposed class who confirmed the estimated size of the class in a brief interview Wednesday, said when asked for comment on the motion filing that "we believe class treatment is the most efficient way to bring justice and provide relief to the thousands of Cigna members impacted by this conduct."

"For years, Cigna and its partner MultiPlan used bogus data to systematically underpay treatment services for people suffering from addiction. They did it regardless of plan language or of what patients were told about how benefits would be paid," Lavin said.

Counsel for Cigna and MultiPlan didn't immediately respond to requests for comment Wednesday. Cigna and MultiPlan spokespeople didn't immediately respond to requests for comment Wednesday.

The proposed class is represented by Matthew M. Lavin, Aaron R. Modiano, Richard Collins, Damon David Eisenbrey and Thomas Edward Kelly of Arnall Golden Gregory LLP; David M. Lilienstein and Katie Joy Spielman of DL Law Group; and Wendy Aline Mitchell of Napoli Shkolnik PLLC.

Cigna Health & Life Insurance Co. is represented by William P. Donovan Jr., Joshua B. Simon, Warren Haskel, Dmitriy Tishyevich, Caroline Incledon and Chelsea Cosillos of McDermott Will & Emery LLP.

MultiPlan is represented by Mohammad Keshavarzi and David Dworsky of Sheppard Mullin Richter & Hampton LLP and Errol J. King Jr., Craig L. Caesar, Katherine C. Mannino, Taylor J. Crousillac and Brittany Holt Alexander of Phelps Dunbar LLP.

The case is RJ et al. v. Cigna Behavioral Health Inc. et al., case number 5:20-cv-02255, in the U.S. District Court for the Northern District of California.

--Editing by Nick Petruncio.