

Recent Court Ruling Screams: Review Your Vendor Agreement

Summary

In May 2014, the 6th US Circuit Court of Appeals affirmed the district court's grant of summary judgment, in the case of Hi-Lex Controls, Inc. vs. Blue Cross Blue Shield of Michigan (BCBSM), and awarded over \$6 Million to Hi-Lex Controls, Inc. In affirming this, the court:

- a. rejected BCBSM's argument that it was not an ERISA fiduciary and
- b. found that BCBSM violated its fiduciary duties under ERISA by self-dealing.

According to the court's opinion, under BCBSM's original Administrative Services Contract (ASC) with their client, BCBSM agreed to process healthcare claims for Hi-Lex's employees and grant those employees access to BCBSM's provider networks. In 1993, BCBSM implemented a new system whereby it would retain additional revenue by adding certain mark-ups to hospital claims paid by its clients. These new fees were charged in addition to the "administrative fee" that BCBSM collected from Hi-Lex under a separate portion of the ASC. Thus, regardless of the amount BCBSM was required to pay a hospital for a given service, it reported a higher amount that was then paid by the self-insured client. BCBSM retained the difference between the amount billed to the client and the amount paid to the hospital through a new system known as "Retention Reallocation."

The fees involved in this new system, termed as "Disputed Fees" by the district court included:

- a. Charges for access to the Blue Cross participating provider and hospital network (Provider Network Fee);
- b. Contribution to the Blue Cross contingency reserve (contingency/risk fee);
- c. Other Than Group subsidy (OTG fee); and
- d. A retiree surcharge

Hi-Lex Controls Inc. asserted that it was unaware of the existence of the Disputed Fees until BCBSM disclosed it in 2011 [18 years later].

BCBSM was charging Hi-Lex Controls Inc., twice for access to its provider network. First through the "administrative fee" as set forth in the ASC and again through the "Retention Reallocation" system.

Could you also be overpaying your vendor?

What This Means For Your Company

The BCBSM and other cases demonstrate that clients need to be diligent in monitoring their vendor relationships to ensure greater transparency and accountability, especially in the reporting of fees being charged. A good vendor management program not only addresses this imperative, but can also achieve significant cost savings by holding vendors accountable to their original agreements.

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Next Steps

1. Review your agreements: Take time to look at the agreements between your organization and your vendor.
 - Have you ensured that the vendor cannot make changes either to the pricing, discount structure, or services without your prior written approval?
 - Are there necessary caveats for obtaining reporting to ensure transparency and validate fees, costs, and services?
 - In the event of any discrepancies in the data, do your agreements contain a provision for remedies?
2. Be proactive: We recommend putting policies and procedures in place, internally and with vendors, that gives you greater access to raw and original data files.



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About Optimum Group

Optimum Group LLC is a vendor management firm that focuses exclusively on the HR supply chain. Our turnkey solutions improve financial and operational plan performance through our multidisciplinary approach, including forensic analysis and maintaining existing vendor relationships, while increasing transparency and accountability.

Through our Employer-sponsored Health Care Group, clients reap direct efficiencies of 10-12% of their health care costs within one year, and 5-7% in subsequent years. For organizations with an edict of expense management, coupled with a culture of strong vendor management, Optimum drives solutions at a time when wastefulness is a luxury we can all no longer afford.