

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

SOUTH BROWARD HOSPITAL
DISTRICT, d/b/a MEMORIAL
HEALTHCARE SYSTEM,

CASE NO.:

Plaintiff,

v.

BLUE CROSS AND BLUE SHIELD
OF FLORIDA, INC., and
HEALTH OPTIONS, INC.

Defendants.

COMPLAINT

Plaintiff, South Broward Hospital District d/b/a Memorial Healthcare System (“Memorial”), hereby sues Defendants, Blue Cross and Blue Shield of Florida, Inc. (“BCBS”) and Health Options, Inc. (“Health Options”) (collectively, “Florida Blue” or “Defendants”), and alleges as follows:

Summary of the Claims

1. Florida Blue utilizes a variety of improper and administratively onerous claims processing practices that violate applicable Florida law and the agreements in place between Memorial and the Defendants. As a result of Florida Blue’s unscrupulous payment practices, Memorial has not been paid for tens of millions of dollars in life-saving healthcare treatment that it furnished to Florida Blue’s insureds.
2. Memorial seeks to recover damages caused by Defendants’ ongoing failure to pay Memorial for treatment provided to patients covered by Florida Blue’s individual health insurance

products. None of the healthcare services at issue in this lawsuit were furnished to patients covered by a Medicare Advantage plan, Federal Employee Health Benefit Plan, or an employer-sponsored health plan that is governed by the Employee Retirement Income Security Act (“ERISA”).

Parties, Jurisdiction, & Venue

3. Memorial is an independent special tax district located in Broward County, Florida. Memorial is a healthcare system consisting of various healthcare providers, including hospitals, physicians, and outpatient facilities.

4. BCBS is a Florida corporation and health insurance company with a principal place of business in Duval County, Florida.

5. Health Options is Florida corporation and Florida-licensed Health Maintenance Organization (“HMO”) with a principal place of business in Duval County, Florida.

6. Defendants provide Florida residents with commercial health insurance plans through the Florida Health Insurance Marketplace (“Florida Exchange”). Defendants also sell individual insurance plans directly to Florida residents.

7. Defendants’ insureds received covered healthcare goods and services at Memorial’s facilities.

8. This Court has subject matter jurisdiction over this case because Memorial seeks damages in excess of \$20,000,000.00.

9. Venue is proper in Broward County because Memorial provided the medical treatment giving rise to this action in Broward County, the parties entered the subject contracts in Broward County, the parties agreed to venue in Broward County in the subject contracts, and the causes of action accrued in Broward County.

10. All conditions precedent to the maintenance of this action have been met, waived, or otherwise excused.

General Facts

11. Defendants are responsible for arranging and paying for the provision of certain healthcare services for patients enrolled in their Florida Exchange and individual insurance products (the “Members”).

12. In connection with Defendants’ contractual obligations to arrange for the provision of these services, Defendants in turn contract with healthcare providers.

The Health Options Hospital Services Agreement

13. On September 15, 2002, Health Options entered into a Hospital Services Agreement with Memorial (the “Health Options Agreement”), which is attached hereto as Ex. A.¹

14. Section 7.2 of the Health Options Agreement, as amended, dictates Memorial’s compensation as follows:

Health Options will reimburse [Memorial] for Covered Services which are rendered in accordance with the provisions of this Agreement (e.g. receipt of authorization if required). Payment will be made to [Memorial] at the address specified by [Memorial] to receive claims payment in accordance with the provisions of this Agreement. It is specifically acknowledged that Health Options will make all claim payments in accordance with, and otherwise comply with, applicable law, including but not limited to Florida Statutes § 641.3155, § 641.3156 and § 641.513 as then in effect.

15. Accordingly, a violation of Florida Statutes § 641.3155 or § 641.3156 constitute a breach of the Health Options Agreement.

¹ Due to trade secret and confidentiality concerns this exhibit will be provided to Health Options with the service copy of the Complaint, and not made part of the public court file.

16. Pursuant to Florida Statutes § 641.3156, Health Options may not deny a claim if Memorial follows Health Options' authorization procedures and Memorial receives authorization for a covered service for an eligible Member.

17. Section 7.3 of the Health Options Agreement, as amended, states:

It is specifically agreed that, if Health Options determines that an overpayment was made to Memorial, Health Options will follow the procedure set out in Florida Statutes § 641.3155, concerning any such overpayment.

18. Florida Statutes § 641.3155 prohibits Health Options from recouping claim payments unless a provider agrees in writing to the recoupment or fails to respond to a proper notice of an alleged overpayment.

19. Florida Statutes § 641.3155(6) provides that an overdue payment of a claim bears simple interest at the rate of 12% annually. The interest on an overdue payment for a claim, or any portion thereof, begins to accrue when the claim should have been paid, denied, or contested.

The BCBS NetworkBlue Hospital Services Agreement

20. On September 15, 2002, BCBS entered into a NetworkBlue Hospital Services Agreement with Memorial (the "NetworkBlue Agreement"), which is attached hereto as Ex. B.²

21. Section 8.1 of the NetworkBlue Agreement, as amended, dictates that Memorial shall be compensated as follows:

For purposes of this Agreement, the compensation paid to [Memorial] and the procedures for the payment thereof shall be described in Exhibit 2 (Compensation for Services and Payment Procedures) and other applicable provisions of this Agreement.

² Due to trade secret and confidentiality concerns this exhibit will be provided to BCBS with the service copy of the Complaint, and not made part of the public court file.

22. Section 5.2 of the NetworkBlue Agreement, as amended, states: “it is further agreed that [BCBS’] claim payment procedures, specifically including prompt payment requirement, will comply with applicable law (e.g. Florida Statutes § 627.613).”

23. Accordingly, a violation of Florida Statutes § 627.6131 constitutes a breach of the NetworkBlue Agreement.

24. Florida Statutes § 627.6131 provides that an overdue payment of a claim bears simple interest at a rate of 12% annually.

Florida Blue’s Improper Pre-Payment Audits

25. Defendants delay payment of Memorial’s claims by conducting pre-payment audits. A pre-payment audit consists of Defendants requesting unnecessary and burdensome information from Memorial before the claims will be processed and paid.

26. The Health Options and NetworkBlue Agreements do not allow pre-payment audits except in limited circumstances only. Specifically, Defendants may only conduct a pre-payment audit if it is required to do so under a governmental contract or by a customer group.

27. Each of the claims issue in this action involve Florida Blue’s individual health insurance products. As such, no governmental contracts or self-funded customer groups exist that require Defendants to conduct pre-payment audits. Pre-payment audits are therefore impermissible under the Health Options and NetworkBlue Agreements for the claims at issue in this lawsuit.

28. Despite this prohibition, Defendants consistently delay payment of Memorial’s claims in violation of the Health Options and NetworkBlue Agreements, as well as Florida Statutes §§ 641.3155 and 627.6131 (the “Florida Prompt Payment Laws”), which also prohibit pre-payment audits of claims.

29. Defendants cause a reduction in reimbursement to Memorial through a variety of improper means, including, but not limited to, inappropriately bundling services and requesting unnecessary records and claims information.

30. Memorial has advised Defendants on numerous occasions that their audit activity is improper, inconsistent with industry standards, and non-compliant with the Health Options and NetworkBlue Agreements. Memorial has also informed Defendants that their audit activity violates Florida Prompt Payment Laws and results in an improper reduction of payment to Memorial. Defendants, however, took no action to correct their improper pre-payment audit practices.

The Claims at Issue

31. This action involves thousands of claims related to the plans and contracts discussed above (the “Claims”) that the Defendants have improperly underpaid or denied.

32. Prior to filing suit, Memorial advised Defendants of the specific improperly denied and underpaid Claims that are the subject of this lawsuit. Defendants did not resolve the Claims, which led to this lawsuit.

33. Because Defendants’ improper conduct is ongoing, additional underpaid and incorrectly denied claims continue to accrue.

COUNT I – BREACH OF CONTRACT AGAINST HEALTH OPTIONS **(The Health Options Agreement)**

34. Memorial realleges and incorporates Paragraphs 1 through 33 as if fully set forth herein.

35. Memorial and Health Options entered into the Health Options Agreement, which is a valid and enforceable contract. *See* Ex. A.

36. Health Options is obligated to pay Memorial for providing covered services to Health Options' Members.

37. Memorial furnished covered services to Health Options' Members.

38. Health Options breached the Health Options Agreement, by, *inter alia*:

- i. denying payment and underpaying Memorial for covered services provided to Health Options' Members;
- ii. failing to respond to Memorial's request for authorization to perform medically necessary covered services;
- iii. pending or delaying the processing and payment of claims and appeals;
- iv. pending or delaying claims indefinitely based on improper coordination of benefits;
- v. pending or delaying facility reimbursement for authorized services until it received unnecessary documentation from a separate physician;
- vi. conducting pre-payment audits in violation of Florida Prompt Payment Laws;
- vii. unreasonably requesting unnecessary medical records prior to processing or paying the claims;
- viii. rejecting claims because its system is unable to process the high volume of units;
- ix. requesting additional information to process claims, then failing to process the claims after receipt of the information;
- x. denying claims for lack of eligibility after Memorial verified eligibility prior to providing medical services;
- xi. failing to submit written claims or refund requests to Memorial for purported overpayments and otherwise improperly retracting payments; and
- xii. engaging in otherwise abusive and unduly burdensome claims processing practices that violate the Health Options Agreement and adversely impact Memorial.

39. Memorial has suffered millions of dollars in damages in the past and continues to suffer damages as a result of Health Options' breaches of the contract.

WHEREFORE, Memorial prays for judgment to be entered in its favor and against Health Options awarding the following: compensatory damages, pre and post-judgment interest as provided by Florida law, interest on overdue payments as provided by Florida Statutes § 641.3155(6), attorney's fees pursuant to Florida Statutes § 641.28, costs and expenses, and such other relief as the Court deems just and equitable.

COUNT II – BREACH OF CONTRACT AGAINST BCBS
(The NetworkBlue Agreement)

40. Memorial realleges and incorporates Paragraphs 1 through 33 as if fully set forth herein.

41. Memorial and BCBS entered into the NetworkBlue Agreement, which is a valid and enforceable contract. *See* Ex. B.

42. BCBS is obligated to pay Memorial for providing covered services to BCBS' Members.

43. Memorial furnished covered services to BCBS' Members.

44. BCBS breached the NetworkBlue Agreement, by, *inter alia*:

- i. denying payment and underpaying Memorial for covered services provided to BCBS' Members;
- ii. failing to respond to Memorial's request for authorization to perform medically necessary covered services;
- iii. pending or delaying the processing and payment of claims and appeals;
- iv. pending or delaying claims indefinitely based on improper coordination of benefits;
- v. pending or delaying facility reimbursement for authorized services until it

- received unnecessary documentation from a separate physician;
- vi. conducting pre-payment audits in violation of Florida Prompt Payment Laws;
 - vii. unreasonably requesting unnecessary medical records prior to processing or paying the claims;
 - viii. rejecting claims because its system is unable to process the high volume of units;
 - ix. requesting additional information to process claims, then failing to process the claims after receipt of the information;
 - x. denying claims for lack of eligibility after Memorial verified eligibility prior to providing medical services;
 - xi. failing to submit written claims or refund requests to Memorial for purported overpayments and otherwise improperly retracting payments; and
 - xii. engaging in otherwise abusive and unduly burdensome claims processing practices that violate the NetworkBlue Agreement and adversely impact Memorial.

45. Memorial has suffered millions of dollars in damages, in the past and continues to suffer damages as a result of BCBS' breaches.

WHEREFORE, Memorial prays for judgment to be entered in its favor and against BCBS awarding the following: compensatory damages, pre and post-judgment interest as provided by Florida law, interest on overdue payments as provided by Florida Statutes § 627.6131, costs and expenses, and such other relief as the Court deems just and equitable.

COUNT III – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
AGAINST HEALTH OPTIONS
(The Health Options Agreement)

46. Memorial realleges and incorporates Paragraphs 1 through 33 as if fully set forth herein.

47. Memorial and Health Options entered into the Health Options Agreement, which is a valid and enforceable contract. Ex. A.

48. The Health Options Agreement incorporates Health Options' claim processing policies and procedures, which Health Options has discretion to change or modify, subject to certain limitations as provided in the Health Options Agreement.

49. In Florida, the implied covenant of good faith and fair dealing applies to every contract, including the Health Options Agreement.

50. Memorial reasonably relied upon Section 7.2 of the Health Options Agreement for determining the process by which Health Options would pay and process the Claims.

51. Health Options materially breached the implied covenant of good faith and fair dealing by violating Memorial's reasonable commercial expectation that, pursuant to Section 7.2 of the Health Options Agreement, Health Options (a) would pay the Claims in accordance with the Health Options Agreement, (b) would not use unreasonable and/or illegal claims processing practices that result in improper underpayments and denials, (c) would not modify its claim processing policies and procedures in an arbitrary or unreasonable manner in order to improperly deny and/or underpay the Claims.

52. Health Options' actions are deliberate and include, but are not limited to, unilaterally modifying its claim processing policies and procedures in an unreasonable manner, imposing unreasonable utilization review and medical necessity criteria, and otherwise using unreasonable and illegal claims processing practices.

53. Despite Memorial's reasonable reliance on Section 7.2 of the Health Options Agreement, Health Options has unfairly frustrated the agreed-upon purpose of the Health Options Agreement by using the aforementioned practices.

54. Memorial's reasonable expectation does not contravene the express terms of the Health Options Agreement.

55. As a direct and proximate result of Health Options' breach of the implied covenant of good faith and fair dealing, Memorial has been harmed.

WHEREFORE, Memorial prays for judgment to be entered in its favor and against Health Options awarding the following: compensatory damages, pre and post-judgment interest as provided by Florida law, costs and expenses, and such other relief as the Court deems just and equitable.

COUNT IV – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
AGAINST BCBS
(The NetworkBlue Agreement)

56. Memorial realleges and incorporates Paragraphs 1 through 33 as if fully set forth herein.

57. Memorial and BCBS entered into the NetworkBlue Agreement, which is a valid and enforceable contract. The NetworkBlue Agreement incorporates BCBS' provider manual, which BCBS has discretion to change or modify, subject to certain limitations in the NetworkBlue Agreement.

58. In Florida, the implied covenant of good faith and fair dealing applies to every contract, including the NetworkBlue Agreement.

59. Memorial reasonably relied upon Section 8.1 of the NetworkBlue Agreement for determining the process by which BCBS would pay and process the Claims.

60. BCBS materially breached the implied covenant of good faith and fair dealing by violating Memorial's reasonable commercial expectation that, pursuant to Section 8.1 of the NetworkBlue Agreement, BCBS (a) would pay the Claims in accordance with the NetworkBlue

Agreement, (b) would not use unreasonable and/or illegal claims processing practices that result in improper underpayments and denials, and (c) would not modify its claim processing policies and procedures in an arbitrary or unreasonably manner in order to improperly deny and/or underpay the Claims.

61. BCBS' actions are deliberate and include, but are not limited to, unilaterally modifying its claim processing policies and procedures in an unreasonable manner, imposing unreasonable utilization review and medical necessity criteria, and otherwise using unreasonable and illegal claims processing practices.

62. Despite Memorial's reasonable reliance on Section 8.1 of the NetworkBlue Agreement, BCBS has unfairly frustrated the agreed-upon purpose of the NetworkBlue Agreement by using the aforementioned practices.

63. Memorial's reasonable expectation does not contravene the express terms of the NetworkBlue Agreement.

64. As a direct and proximate result of BCBS' breach of the implied covenant of good faith and fair dealing, Memorial has been harmed

WHEREFORE, Memorial prays for judgment to be entered in its favor and against BCBS awarding the following: compensatory damages, pre and post-judgment interest as provided by Florida law, costs and expenses, and such other relief as the Court deems just and equitable.

COUNT V – INJUNCTIVE RELIEF AGAINST HEALTH OPTIONS

65. Memorial realleges and incorporates Paragraphs 1 through 33 as if fully set forth herein.

66. This is an action for injunctive relief relating to Health Options' improper pre-payment audit practices.

67. Health Options delay payment of Memorial's Claims by conducting pre-payment audits in violation of the Health Options Agreement and Florida Prompt Payment Laws.

68. Health Options causes a reduction in reimbursement to Memorial through a variety of improper means, including, but not limited to, inappropriately bundling services and requesting unnecessary records and claims information.

69. Health Options' actions have caused irreparable harm to the provider-patient relationship and Memorial's reputation by creating confusion among patients and unnecessary delays.

70. Health Options' persistent improper pre-payment audit practices are ongoing and will continue to cause Memorial irreparable harm.

71. A money judgment in this case will only temporarily compensate Memorial for past losses. It will not stop Health Options' ongoing and continuous procedures designed to improperly withhold and deny payment of money to Memorial, which is necessary to maintain its ability to provide essential medical care and treatment to the public – especially during the ongoing Covid-19 pandemic.

72. Accordingly, Memorial has no adequate remedy at law.

73. Memorial has a substantial likelihood of success on the merits as Health Options' actions are in violation of the Health Options Agreement, as well as Florida Prompt Payment Laws.

74. Entry of an injunction against Health Options will serve the public interest, including, but not limited to, allowing Memorial to better serve the public on an ongoing basis without unnecessary delays.

75. Entry of an injunction against Health Options will not cause unjustifiable hardship to Health Options, while the failure to enter such injunctive relief would continue to cause severe

hardship to Memorial.

WHEREFORE, Memorial respectfully requests that this Court enter an Order (a) enjoining Health Options from continuing to conduct improper pre-payment audits, (b) requiring Health Options to comply with the Health Options Agreement and Florida Prompt Payment Laws, (c) requiring Health Options to file with the Court a sworn written report setting forth, in detail, the manner in which it has complied with the injunction, (d) awarding Memorial costs expenses, and (e) such other relief as the Court deems just and equitable.

COUNT VI – INJUNCTIVE RELIEF AGAINST BCBS

76. Memorial realleges and incorporates Paragraphs 1 through 33 as if fully set forth herein.

77. This is an action for injunctive relief relating to BCBS' improper pre-payment audit practices.

78. BCBS delay payment of Memorial's Claims by conducting pre-payment audits in violation of the NetworkBlue Agreement and Florida Prompt Payment Laws.

79. BCBS causes a reduction in reimbursement to Memorial through a variety of improper means, including, but not limited to, inappropriately bundling services and requesting unnecessary records and claims information.

80. BCBS' actions have caused irreparable harm to the provider-patient relationship and Memorial's reputation by creating confusion among patients and unnecessary delays.

81. BCBS' persistent improper pre-payment audit practices are ongoing and will continue to cause Memorial irreparable harm.

82. A money judgment in this case will only temporarily compensate Memorial for past losses. It will not stop BCBS' ongoing and continuous procedures designed to improperly withhold

and deny payment of money to Memorial, which is necessary to maintain its ability to provide essential medical care and treatment to the public – especially during the ongoing Covid-19 pandemic.

83. Accordingly, Memorial has no adequate remedy at law.

84. Memorial has a substantial likelihood of success on the merits as BCBS' actions are in violation of the NetworkBlue Agreement, as well as Florida Prompt Payment Laws.

85. Entry of an injunction against BCBS will serve the public interest, including, but not limited to, allowing Memorial to better serve the public on an ongoing basis without unnecessary delays.

86. Entry of an injunction against BCBS will not cause unjustifiable hardship to BCBS, while the failure to enter such injunctive relief would continue to cause severe hardship to Memorial.

WHEREFORE, Memorial respectfully requests that this Court enter an Order (a) enjoining BCBS from continuing to conduct improper pre-payment audits, (b) requiring BCBS to comply with the NetworkBlue Agreement and Florida Prompt Payment Laws, (c) requiring BCBS to file with the Court a sworn written report setting forth, in detail, the manner in which it has complied with the injunction, (d) awarding Memorial costs expenses, and (e) such other relief as the Court deems just and equitable.

JURY TRIAL

Memorial demands trial by jury on all issues so triable.

DATED this 30th day of June 2020.

WOLFE | PINCAVAGE

Attorneys for Memorial

2937 SW 27th Avenue, Suite 302

Miami, Florida 33133

Telephone: 786-409-0800

/s/ Danya J. Pincavage

Douglas A. Wolfe

Fla. Bar No.: 28671

doug@wolfepincavage.com

Danya J. Pincavage

Fla. Bar No.: 14616

danya@wolfepincavage.com

Omar Ali-Shamaa

Fla. Bar No. 121461

omar@wolfepincavage.com

Exhibit A
The Health Options Agreement

Exhibit B
The NetworkBlue Agreement