

Group Health Plan's Anti-Assignment Provision Fails, Ninth Circuit Says

A Practical Guidance® Article by Laura L. Ferguson, Locke Lord LLP



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This article discusses anti-assignment clauses in ERISA health plans which are useful to plan sponsors in fending off lawsuits by out-of-network providers. Federal courts have consistently upheld anti-assignment provisions contained in the plan document and/or the summary plan description (SPD).

Case Discussion

In a recent unpublished ERISA case, the U.S. Court of Appeals for the 9th Circuit held that the anti-assignment language contained in the major medical benefit booklet for a self-funded ERISA plan was not a term incorporated by reference into the governing plan document and was unenforceable against the out-of-network emergency medical provider seeking payment of plan benefits paid by the plan to participants. See [Martin Luther King, Jr. Community Hospital v. Community Insurance Company DBA Anthem Blue Cross Blue Shield](#). The 9th Circuit found that the SPD for the plan incorporated only the claims and payment terms from the major medical benefit booklet and that the anti-assignment provision was not a term or condition of receiving benefits and should not be incorporated into the plan document. The dissenting opinion disagreed with the majority and would have incorporated the anti-assignment provision into the plan document based on the incorporation language.

The key points we learn from this case are:

- Include an unambiguous anti-assignment provision in the governing wrap plan document. Do not rely solely on a vendor's benefit booklet that is incorporated by reference to the governing wrap plan document.
- Ensure incorporation language clearly incorporates the entirety of a vendor's benefit booklet and does not limit the incorporation to the terms and conditions of receiving benefits or other purportedly similarly limiting language.
- Ensure definitions in the governing wrap plan document use terms that are less likely to be conflated by the plaintiff's bar. In this case, the defined term "Certificates of Coverage" was used to incorporate all vendor documents, which could be and was technically broad enough to capture a "Benefit Booklet"; however, the term "Certificate of Coverage" is an insurance industry term of an actual type of document issued by the insurance company to the insureds to describe key terms. Sometimes these are called "Evidence of Insurance".
- The 9th Circuit seemed to struggle with incorporating a "Benefit Booklet" as a "Certificate of Coverage" in this case. If the wrap plan document instead had used a generic term that was not an insurance industry specific term, this may have helped. For example, consider using the term "Constituent Benefit Plan Documents".

Related Content

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- [Martin Luther King, Jr., Cmty Hosp. v. Cmty. Ins. Co.](#), 829 Fed. Appx. 156, 2020 U.S. App. LEXIS 31441 (9th Cir. 2020)

- Health Care Benefits Law § 1.09, “Litigation Involving Medical Service Providers”
- North Carolina Personal Injury Liens Manual 5.4, “A Guide for Dealing with the ERISA Reimbursement Claim”
- FEATURE, A STITCH IN TIME USING WRAP DOCUMENTS TO ENSURE GROUP INSURANCE POLICIES COMPLY WITH ERISA AND AVOID SANCTIONS, 26 Probate & Property 40
- 53 Tort & Ins. L.J. 429, “Recent Developments in Health Insurance, Life Insurance, And Disability Insurance Law”

Practical Guidance

- [Claims Procedure ERISA Requirements Checklist \(Group Health Plans\)](#)
- [Open Enrollment Notices Checklist \(Health and Welfare Plans\)](#)

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Laura Ferguson assists clients with a wide variety of employee benefits, executive compensation, and privacy and cybersecurity matters. She regularly assists clients with drafting, reviewing and amending all types of retirement and welfare plans for compliance with the Employee Retirement Income Security Act, Internal Revenue Code, and other applicable federal or state laws.

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