

**From:** Terri Marchiori <[Terri.Marchiori@ama-assn.org](mailto:Terri.Marchiori@ama-assn.org)>

**Date:** September 9, 2021 at 11:09:53 AM EDT

**To:** [evp.grstaff@groups.ama-assn.org](mailto:evp.grstaff@groups.ama-assn.org), [specialty.evps@groups.ama-assn.org](mailto:specialty.evps@groups.ama-assn.org), [county.evps@groups.ama-assn.org](mailto:county.evps@groups.ama-assn.org)

**Subject:** United Agrees To Give Physicians ERISA Rights in Connection with Repayment Demands

### **Bottom line**

Recent class action settlement gives **all** out-of-network (“ONET”) physicians important – and often overlooked – rights under the Employee Retirement Income Security Act of 1974 (“ERISA”) in connection with repayment demands.<sup>[1]</sup>

### **What is this case about?**

After paying claims submitted by ONET physicians, United sometimes determined that it overpaid a claim and sent the physician a repayment demand (“Repayment Demand”). Plaintiffs alleged that United failed to provide notice and appeal rights required by ERISA in connection with Repayment Demands. The class did not seek the payment of any money, but sought to require United to provide ERISA notice and appeal rights to ONET physicians (and allied health care professionals) in connection with past and future Repayment Demands.

### **Who makes up the class?**

The class, made up of about 50,000 ONET physicians, includes those that: (1) received a Repayment Demand any time after January 24, 2005; and (2) where one such Repayment Demand was not fully resolved by payment, offset, or otherwise, as of June 2, 2021.

### **How does the settlement benefit Federation of Medicine members?**

- ➔ For Repayment Demands issued in the 12 months prior to June 2, 2021, United is required to: (a) provide a spreadsheet to each class member containing information about each of those demands; and (b) automatically treat such class member as their patients’ Authorized Representative under ERISA for purposes of those demands.
  
- ➔ For New Repayment Demands issued by United’s UNET claim processing system, United is required to treat an ONET provider as an Authorized Representative under ERISA so long as the provider gives United: (a) an executed Authorized Representative Designation form (United’s website contains such a form) or (b) an executed Assignment of Benefits form that purports to “assign,” “convey,” or “transfer” to a provider any “right,” “claim,” “cause of action,” or “chose in action” with respect to the plan beneficiary’s or plan participants’ plan or insurance policy (regardless of whether that form is an effective assignment of benefits).

---

<sup>[1]</sup> *Integrated Orthopedics v. UnitedHealth Group*, No. 11-425 (D.N.J)

- If an ONET provider submits either of these forms to United in connection with a New Repayment Demand issued by the UNET system, United must give that provider ERISA rights as an Authorized Representative.

### **Why is this important to Federation of Medicine members?**

ERISA provides insured patients with a powerful set of legal rights to protect them from errors and other misconduct by those that administer their healthcare plan (in this case, United). What is often overlooked is that a physician can also take advantage of many of these rights if the physician is designated as their patient's Authorized Representative under ERISA. An Authorized Representative is a person entitled to act on behalf of a plan participant for purposes of ERISA.

This settlement makes it much easier for a physician who receives a Repayment Demand to be deemed by United to be an Authorized Representative, which means that the physician can “step into the shoes” of the patient and exercise the patient's legal rights under ERISA. This includes the right to obtain detailed information about the written plan terms that purportedly support the Repayment Demand and United's rationale, as well as the right to pursue an appeal to further understand and challenge that determination. These rights are designed to put the burden on United to show why, under the written terms of the patient's plan, a Repayment Demand is reasonable. Although United allows ONET providers to file “Claim Reconsideration Requests” or “Appeals,” those procedures are not subject to ERISA's requirements. As a result, even physicians who take these steps often lack the information necessary to determine if a Repayment Demand is reasonable. With this settlement, physicians have a much clearer path to obtaining the substantive information that ERISA promises, which will make their appeals more informed and effective.

In other words, if one of your members wants to know what to do if United sends them a New Repayment Demand, and the member's patient executed an Authorized Representative Designation or an assignment, the member has the option of responding in effect – “I dispute your claim. If you intend to pursue this further, I insist that you give me all of my patient's rights ERISA and prove it in an ERISA hearing.”

### **Have questions or looking for more information?**

For more information or questions related to the above, please contact Diana Huang ([diana.huang@ama-assn.org](mailto:diana.huang@ama-assn.org)).<sup>[2]</sup>

<sup>[1]</sup> *Integrated Orthopedics v. UnitedHealth Group*, No. 11-425 (D.N.J.)

<sup>2</sup> The information provided above does not, and is not intended to, constitute legal advice; instead, all information and content provided above is for general purposes only.

---

<sup>[2]</sup> The information provided above does not, and is not intended to, constitute legal advice; instead, all information and content provided above is for general purposes only.



TERRI MARCHIORI  
Director, Federation Relations  
330 N Wabash  
Chicago, IL 60611-5885

312.464.5271  
[Terri.marchiori@ama-assn.org](mailto:Terri.marchiori@ama-assn.org)

