

# Anti-Assignment of Benefits

## In General

Direct payments to hospital and physicians is permitted. Such assignments will have no affect on the benefit amount.

## Anti-Assignment Provision

It is now well established that provider-assignees have the right to sue under ERISA. It is also well established that ERISA plans may, but are not required to, allow assignment of benefits.

As is usually the case, these positions prevail:

- The payer routinely gives an assignment to the provider thereby setting up an adversary.
- The provider needs the assignment to keep its business going so has the payer as an adversary.

Is the payer at a disadvantage? Possibly yes. What might be done to more equalize the positions of the payer and provider? Amend the plan document to allow benefit assignments only with the consent of the payer; this is so-called anti-assignment provision.

That the plan has a provision allowing assignments only with the permission of the payer translates to an anti-assignment provision. Is it legal for a plan to have an anti-assignment provision? Yes.

Payers often will use the provision to prevent the provider-assignee from taking as a payment *in full* the amount paid by the plan; that is, waiving the copayment and deductible. This waiver act by the provider, while fraudulent, nevertheless is done with some frequency in the *real world*. The anti-assignment rule makes certain participant pays the copayment and deductible and is therefore a cost containment provision.

Additionally, an anti-assignment provision is a *bargaining chip* available to the payer to negotiate better *terms* as regards discount, e.g., with the hospital.

There are instances, while rare, which made convenient, from an administrators standpoint, to pay the participant directly. That way, at least the plan is certain that its obligations have been 100% discharged. Paying the participant and being *done with it* is cheaper than paying the benefits to an interpleader which will involve legal and other expenses.

Most important, of course, is that by not assigning, the plan has the greatest opportunity to recover a mispayment for the participant and has a lesser likelihood of a suit for mispayment from the participant.

The *public relations* aspects of the anti-assignment provision in a payer's health care plan is awesome.

- Considerable mischief will ensue if the employer (payer) brands the provider as a *bad guy* or vice versa which is the usual fallout from the anti-provision.
- Were the Plan Supervisor to be instrumental in promoting such provision, the providers, as a group, would soon brand the Plan Supervisor as anti-provider putting such Plan Supervisor in a competitive disadvantage. Of concern is the likelihood that the provider, in response to the anti-assignment provision would do a *one up* move and refuse admission to any of the plan's participants without the bill being paid in advance; that is, escalate the adversarial pastures.