McGAUGHEY BRIDGES DUNLAP PLLC
TRIAL ATTORNEYS

July 23, 2020

Ciox Health
P.O. Box 409740
Atlanta, GA 30384-9740

Re: Pinky Blackwell v. Margo MacVicar-Whelan
Our File Number : 1971.19
Your Customer Number : 2306024

To Whom it May Concern:

As of late, this firm has been receiving bills illegally tendered by your company in violation of the Affordable Care Act. Specifically, you are clinging to one trial court decision in Washington DC that concluded the ACA billing rate does not apply when a patient asks that their records be sent to their attorney.

I recently phoned your billing department to discuss this issue. I explained the basic import of this letter.

Even if you could reasonably rely on that one trial court order within the jurisdiction of that one trial court in Washington DC, you may not do so as to other jurisdictions.

The Ninth Circuit Court of Appeals in Webb v. Smart Document Solutions, LLC, 499 F.3d 1078 (9th Cir. 2007) expressly held the ACA fee structure applies to records requests made by patients to send their records directly to their attorney. While finding state law did not take precedence over HIPPA in terms of what is required for a release of records, the court said:

> Our holding, however, in no way precludes attorneys from assisting their clients in accessing and obtaining their medical records without triggering the hefty fees… [I]t is circuitous, if not downright silly, to require an individual to request his own medical records and having received them, hand them to his lawyer.

Id. at 1089 (internal citations omitted).

In anticipation of a response by you that the trial court decision you are relying on post-dates the opinion above from the Ninth Circuit, that is of no import for a variety of reasons.

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First, the law that applies in the Ninth Circuit is that which has been articulated by the Ninth Circuit Court of Appeals. Until you successfully challenge this issue in the Ninth Circuit, the case law above remains authoritative.

Second, the basis of the trial court decision you rely on was its finding that guidance provided by the Department of Health and Human Services and its so-called "third-party directive" failed to comply with rulemaking procedures. However, the Ninth Circuit authorities cited above did not rely on that guidance by HHS. Instead, it relied on the language of the ACA itself and while acknowledging there may have been some intention to not allow a patient to direct copies of records to be sent to a third party, the 9th Circuit found that was a distinction without distinction, calling it (as stated above) "downright silly" and incompatible with the acts intention to increase access to patient records

Every situation of your company billing this firm illegal copy charges, prohibited by the ACA, involves a specific request by our clients directly to the provider to provide our client a copy of their medical records but to send them to our address. In the Ninth Circuit at least, as I did not bother to research other Circuits because it is the law of this Circuit that applies, the ACA copy charge limitations apply.

Given the foregoing, you are respectfully advised that we shall not pay any of the illegal invoices you have sent to our firm arising out of our client's request for copies of their medical records. If you undertake any attempt to collect on such illegal invoices, including but not limited to reporting them to any credit reporting agency, we shall bring a multitude of claims against you arising out of both federal and state law.

Ethically, your conduct is poor. Legally, it is illegal indeed. That your sole support for ignoring the law is one singular trial court opinion says all that need be said. Pursue this further at your peril.

Sincerely,

Dan'L W. Bridges

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