

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

Robert Ringel, MD individually and for)
the benefit and on behalf of all others)
similarly situated,)

Civil Action No.

Plaintiffs,)

v.)

**C O M P L A I N T
(Jury trial demanded)**

Care Improvement Plus Group)
Management, LLC, Care Improvement)
Plus Practitioners, LLC, and United)
Healthcare Services, Inc.)

Defendants.)

Plaintiff Robert Ringel, MD, individually and pursuant to Rule 23, FRCP, for the benefit of all medical providers who had their reimbursements from Defendants for treating Medicare Advantage Plan recipients down-coded from payments for office procedures occurring in the medical practitioner's office (where the services at issue occurred) to payments for services performed at skilled nursing facility services (which receive a lower reimbursement rate), complain of Defendants as follows:

P A R T I E S

1. Plaintiff Dr. Robert Ringel is a neurologist and is a citizen and resident of Spartanburg County, South Carolina.
2. Defendant Care Improvement Plus Group Management, LLC is a limited liability company organized and existing under the laws of the State of Maryland with a principal place of business outside South Carolina. This entity may be served via its Registered Agent in South Carolina, CT Corporation System, 2 Office Park Court, Columbia, SC, 29223, Suite 103.

3. Defendant Care Improvement Plus Practioners, LLC is a limited liability company organized and existing under the laws of the State of Maryland with a principal place of business outside South Carolina. This entity may be served via its Registered Agent in South Carolina, CT Corporation System, 2 Office Park Court, Columbia, SC, 29223, Suite 103.

4. Defendant United Healthcare Services, Inc. is a corporation organized and existing under the laws of the State of Minnesota with a principal place of business outside South Carolina. This entity may be served via its Registered Agent in South Carolina, CT Corporation System, 75 Beattie Place Two, Shelter Centre, Greenville, SC.

J U R I S D I C T I O N

5. This Court has personal jurisdiction and venue is proper in this district by virtue of, among other things, the fact that a substantial part of the events giving rise to this Complaint occurred in this District. Defendants also entered into contracts to be performed in part in South Carolina, Defendants regularly transact business in South Carolina, and the conduct at issue occurred in part in South Carolina.

6. This Court has original jurisdiction over this action because the matter in controversy exceeds the sum or value of \$5,000,000, this is a national class action, and some members of the class of plaintiffs are citizens of states different from the Defendants. *See* 28 U.S.C. § 1332(d)(2). Plaintiff and other doctors in his practice alone have already lost over eight hundred dollars this year due to Defendants' continuing wrongful conduct and, upon information and belief, this uniform wrongful conduct is occurring nationwide to thousands of medical providers.

F A C T S

7. This case arises from the Defendants' scheme to reimburse medical service providers at a lower rate than is required under Medicare's point of service ("POS") billing codes.

8. Plaintiff is a neurologist practicing medicine in Spartanburg, South Carolina.
9. Defendant Care Improvement Plus Group Management, LLC, upon information and belief, is an entity owned, controlled and operated by Defendant United Healthcare Services, Inc. to administer Care Improvement Plus a Medicare Advantage Plan.
10. Defendant Care Improvement Plus Practioners, LLC, upon information and belief, is an entity owned, controlled and operated by Defendant United Healthcare Services, Inc. to administer Care Improvement Plus a Medicare Advantage Plan.
11. Defendant United Healthcare Services, Inc. is a health insurance company that offers its members Medicare Advantage Health Plans such as Care Improvement Plus.
12. Dr. Ringel, and all similarly situated class members, provided medical services to Medicare Recipients (“Medicare Recipients”) who were members of Defendants’ Medicare Advantage Plans and also residents of skilled nursing facilities (“SNF”).
13. The treatment at issue was medical treatment given to the Medicare Recipients at the class member’s offices and away from the SNF where the Medicare Recipients reside.
14. The services at issue are not covered by any bundled SNF payment agreements.
15. Defendants are required to administer and reimburse their Medicare Advantage Health Plans in accord with the Medicare Claims Processing Manual and its POS reimbursement codes.
16. Publication 100-04—Medicare Claims Processing Manual (“the manual”), Chapter 1 — General Billing Requirements, states that the POS codes that best represents where the service is provided should be entered and it defines the POS codes.
17. The POS codes included in this Manual and their definitions are part of a national code set that must be used on all healthcare claims and should be interpreted the same for all entities.

18. The Manual provides in part: “**10.6- Carrier Instructions for Place of Service (POS) Codes.** For purposes of payment under the Medicare Physician Fee Schedule (MPFS), the POS code is generally used to reflect the actual setting where the beneficiary receives the face-to-face service.”

19. Dr. Ringel and the class members provided face-to-face service to the Medicare Recipients at their offices. As such, the POS code for reimbursement should have been classified as 11’s. This reimbursement code is defined as: “**11- Office** Location, other than a hospital, skilled nursing facility (SNF), military treatment facility, community health center, State or local public health clinic, or intermediate care facility (ICF), where the health professional routinely provides health examinations, diagnostics, and treatment of illness or injury on an ambulatory basis.”

20. Defendants wrongly down-coded the invoices submitted by Plaintiff and the class members and only reimbursed the treatment as a SNF POS. The manual includes the following definition for the SNF POS: “**31- Skilled Nursing Facility** A facility which primarily provides inpatient skilled nursing care, and related services to patients who require medical, nursing, or rehabilitative services but not provide the level of care or treatment available in a hospital.”

21. The treatment at issue occurred at the class members’ offices and not at skilled nursing facilities. As such, Defendants are required to reimburse Plaintiff and the class members using the 11- Office POS which provides for higher reimbursement rates than the 31- Skilled Nursing Facility reimbursements used by Defendants.

22. Plaintiff Dr. Ringel’s office submitted this issue to CMS (the governmental entity that administers Medicare) and received the response attached as Exhibit 1. This response provides

in part: “We believe that it is clear that for services not covered under the bundled skilled nursing facility payment, when provided in a practitioner’s office, that the correct POS is 11- Office.”

23. CMS is correct Defendants are using the wrong reimbursement code and not paying monies owed to Plaintiff and the class members under higher the POS 11-Office reimbursement rate.

24. Plaintiff and all class members have suffered and continue to suffer damages as a result of the arbitrary down-coding employed by Defendants.

C L A S S A C T I O N A L L E G A T I O N S

25. Plaintiff brings this class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of all persons who had their reimbursements from Defendants downgraded from the POS code for office visits occurring in the medical practitioner’s office to the POS code for skilled nursing facilities. Excluded from this class are the Defendants, any entity in which a Defendant has or had a controlling interest, and their legal representatives, agents, affiliates, heirs and successors and interest or assigns of any such excluded party.

26. Members of the class are so numerous that joinder of all members is impracticable. The disposition of the members’ claims in a class action will provide substantial benefits to the parties and to the Court. During the class period, Defendants have down-coded thousands of reimbursements submitted by unsuspecting medical providers like Plaintiff who provided service to Medicare recipients in their offices.

27. Plaintiff’s claims are typical of the claims of the class. Plaintiff and all members of the class sustained damages as a result of the Defendants’ misconduct.

28. Plaintiff will fairly and adequately protect the interests of the class and have retained competent counsel with significant class action representation. Plaintiff has no interests that are contrary to, or in conflict with, those of the class that Plaintiff seeks to represent in this action.

29. A class action is superior to all other available methods for the fair and efficient resolution of this controversy because the damages suffered by individual class members may be relatively small whereas the expense and burden of individual litigation would make it difficult for the members of the class to individually address the wrongful acts of Defendants. There will be no difficulty in the management of this class action. There is a well-defined community of interest in the questions of law and fact relevant to this dispute, and those questions predominate over any questions that may only affect individual class members.

C A U S E S O F A C T I O N

Count One: Breach of Contract

30. Plaintiff incorporates by reference each allegation above as if set forth fully below.

31. Plaintiff and all class members entered into contracts with Defendants whereby Plaintiff and all class members would provide medical service to the Medicare Recipients and in turn receive compensation from Defendants pursuant to the Medicare POS reimbursement codes.

32. Plaintiff and all class members provided consideration to Defendants in the form of providing medical services to the Medicare recipients at their respective offices.

33. In exchange, Defendants promised that they would provide Plaintiff, and all class members, payments pursuant to the Medicare POS reimbursement codes.

34. Defendants breached the contracts with Plaintiffs and all class members by refusing to properly reimburse Plaintiff and the class members using POS 11 Office reimbursement code and instead wrongly used the lesser reimbursement code; POS 31- Skilled Nursing Facility.

35. These breaches of contract by Defendants caused damage to Plaintiff and the class members because the reimbursements received were for lower amounts than Plaintiff and the class members were owed.

36. The implied covenant of good faith and fair dealing required that Defendants reimburse Plaintiff and the class members using the POS 11 Office code because the services at issue were rendered at Plaintiff's and the class members' offices. In other words, the point of service was at Plaintiff's and the class members' offices and not at a skilled nursing facility.

37. Defendants breached the implied covenant of good faith and fair dealing by failing to utilize the POS 11 Office code and instead, in an effort to make more money at Plaintiff's and the class members' expense, down-coded the services and only paid Plaintiff and the class members using the POS 31- Skilled Nursing Facility reimbursement rate.

38. As a result of these breaches, Plaintiffs and all class members have suffered damages.

Count 2 Declaratory Judgment, Injunctive Relief and Disgorgement

39. The allegations set forth in the paragraphs above are incorporated herein as if set forth verbatim.

40. This cause of action seeks a declaratory judgment for the purposes of determining a question of actual controversy between all Defendants, Plaintiff and all class members.

41. Plaintiff seeks a determination of the following questions:

- a. Should Plaintiff and all class members after providing services to a Medicare Recipient at their office be reimbursed using POS 11?
 - b. What is the proper reimbursement code for Plaintiff and all class members when they treat a Medicare Recipient at their office and away from a SNF?
42. Plaintiff seeks a declaratory judgment from this Court that includes:
- a. A permanent injunction preventing Defendants from down-coding Plaintiff and all class members reimbursement codes to POS 31 when Plaintiff and all class members have provided medical services to a Medicare recipient at their office;
 - b. Disgorgement from Defendants of all monies that were withheld from Plaintiff and the class members as a result of Defendants wrongly down-coding Plaintiff and all class members services from POS 11 to POS 31.

WHEREFORE, Plaintiff individually and on behalf of all class members pray as follows:

- a. that a sum of money compensation be awarded to Plaintiff and all class members that will fairly and reasonably compensate them for all damages which have been and will be suffered, as more fully described above;
- b. that the Court issue a declaratory judgment as requested in Count Two;
- c. that the Court issue injunctive relief pursuant to Count Two;
- d. that the Court issue an order disgorging all wrongfully retained reimbursement funds as requested in Count Two;
- e. that the costs and prejudgment interest be awarded to Plaintiff and all class members as allowed by law; and
- f. that the Plaintiffs and all class members receives all relief to which they are entitled.

s/ Brady R. Thomas
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