

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES, EX REL. DR. SUSAN NEDZA,)	
)	
Plaintiff-Relator,)	No. 15-cv-6937
)	
v.)	JUDGE JORGE L. ALONSO
)	
AMERICAN IMAGING MANAGEMENT, INC., <i>et al.</i>)	JOINT STATUS REPORT
)	
Defendants.)	

JOINT STATUS REPORT

Plaintiff Relator Dr. Susan Nedza and Defendants American Imaging Management, Inc. (“AIM”), Anthem Inc., and the “Defendant Insurance Plans”: Anthem Health Plans of Kentucky, Inc., Anthem Health Plans of New Hampshire, Inc., Anthem Health Plans, Inc., Anthem Insurance Companies, Inc., Blue Cross of California, Blue Cross and Blue Shield of Georgia, Inc., Blue Cross and Blue Shield Healthcare Plan of Georgia, Community Insurance Co., Compcare Health Service Insurance Corp., Empire Healthchoice HMO, Inc., Empire Healthchoice Assurance, Inc., Health First Health Plans, Inc., HMO Colorado, Inc., HMO Missouri, Inc., Blue Cross of Idaho Care Plus, Inc., Blue Cross Blue Shield of Michigan Mutual Insurance Company, Blue Cross and Blue Shield of North Carolina, Moda Health Plan, Inc., Priority Health, Providence Health Plan, Providence Health Assurance, Regence Bluecross Blueshield of Oregon, Regence Bluecross Blueshield of Utah, Regence Blueshield, Regence Blue Shield of Idaho, Asuris Northwest Health, and Pacificsource Community Health Plans (collectively, “Defendants”) jointly submit this status report:

I. Nature of the Case

A. Federal jurisdiction is provided by 28 U.S.C. § 1331 for these claims brought under the Federal False Claims Act, 31 U.S.C. § 3732. Jurisdiction is also proper under 28 U.S.C. § 1345 because the United States is a non-intervening plaintiff.

B. Relator's Statement of the Case: This a civil action by the United States, through Plaintiff-Relator Dr. Susan Nedza, to recover treble damages and civil penalties arising from the alleged practice of filing false certifications and claims for and receipts of payments under Medicare Advantage Program in violation of the False Claims Act, 31 U.S.C. §§ 3729-3733, by Defendants AIM, its parent company, Anthem Inc., as well as the Defendant Insurance Plans.

Defendant Insurance Plans contracted with the government to provide insurance to Medicare beneficiaries under the Medicare Advantage program. Relator alleges that as a condition of the Medicare Advantage program, Defendants certified that they would provide the same coverage to Medicare beneficiaries as they would receive if beneficiaries were direct Medicare participants. The Second Amended Complaint alleges that, instead, the Defendant Insurance Plans fraudulently and systematically refused and failed to cover medical procedures that should have been approved under Medicare rules. No counterclaims or third-party claims have been filed.

Defendants' Statement of the Case: Defendants deny all allegations. In addition, as set forth in the motions to dismissed filed at Dkt. 101, 130, 133, 144, 149, 152, 157 and 160, the Second Amended Complaint ("SAC") suffers from pleading deficiencies and cannot satisfy even the pleading standards of Federal Rule of Civil Procedure 8, let alone the more rigorous particularity standard of Rule 9(b). Relator has failed to identify any claims that were submitted to the government, to say nothing of any claims that were purportedly false or fraudulent. Similarly, Relator has failed to identify a single false statement that was made to the

government. In fact, the SAC is bereft of any details or information regarding any specific claims or statements that satisfy the mandatory pleading requirements. Moreover, Relator's SAC fails because it is based on a legal theory that is untenable and cannot provide the basis for a violation of the FCA and because Relator's claims are impermissibly based upon public disclosures. All Defendants have filed motions to dismiss the SAC in its entirety, with prejudice.

C. Relator seeks triple damages, civil penalties, interest, and attorneys' fees and litigation costs. Defendants deny Relator is entitled to recover any damages.

D. The Parties agree to a jury trial.

E. All Defendants have been served.

II. Discovery and Pending Motions

A. Currently pending are seven motions to dismiss (some joint) filed by all Defendants. Dkt. 101, 130, 133, 144, 149, 152, 157, 160.

B. The Anthem Defendants' Unopposed Motion for Additional Pages for Movants' to Respond to Relator's Second Amended Complaint Instanter (Dkt. 147) is also pending.

C. Movants' Motion to Stay Discovery (Dkt. 170) is also pending.

D. The Parties have conferred in accordance with Rule 26(f).

i. Discovery in this case will be extensive, including significant electronic discovery covering such things as training materials, patient information and medical records, claims data, CMS billing information and contracts, and marketing information.

ii. Protective orders may be requested to protect patient privacy or business information.

iii. Relator's proposed date for Rule 26(a)(1) disclosures: July 1, 2018.

Defendants object to any discovery proceeding until the Court has ruled

on the motions to dismiss, which would be wholly dispositive of all issues alleged in the SAC or at a minimum, significantly narrow the scope of the litigation.

- iv. Proposed date for completion of fact discovery: To be determined after ruling on motions to dismiss.
- v. Expert discovery is expected.

III. Settlement and Referrals

- A. The Parties have not yet had settlement discussions.
- B. At this time, the Parties do not request a settlement conference.
- C. Counsel have informed their clients about the possibility of proceeding before a magistrate. The Parties do not unanimously consent.

Dated: April 2, 2018

Respectfully Submitted:

Counsel for Defendants American Imaging Management, Inc., Anthem Health Plans of Kentucky, Inc., Anthem Health Plans of New Hampshire, Inc., Anthem Health Plans, Inc., Anthem Inc., Anthem Insurance Companies, Inc., Blue Cross Blue Shield Healthcare Plan of Georgia, Inc., Blue Cross and Blue Shield of Georgia, Inc., Blue Cross of California, Community Insurance Co., Compcare Health Service Insurance Corp., Empire HealthChoice Assurance, Inc., Empire Healthchoice HMO, Inc., HMO Colorado, Inc., HMO Missouri, Inc. PacificSource Community Health Plans, Blue Cross of Idaho Care Plus, Inc.

/s/ Lisa Noller

Lisa Noller, lnoller@foley.com
Patrick McMahon, pmcmahon@foley.com
FOLEY & LARDNER, LLP
321 North Clark Street, Suite 2800
Chicago, IL 60654
312.832.4500

Michael J. Tuteur, mtuteur@foley.com
Jessica E. Joseph, jjoseph@foley.com
FOLEY & LARDNER, LLP
111 Huntington Avenue, Suite 2600
Boston, MA 02199
617.342.4000

Counsel for Moda Health Plan, Inc.

/s/ David Goldhaber

David Goldhaber,
david.goldhaber@wilsonelser.com
Michael J. O'Malley,
michael.o'malley@wilsonelser.com
WILSON ELSER MOSKOWITZ EDELMAN &
DICKER LLP
55 West Monroe Street, Suite 3800
Chicago, IL 60603
312.704.0550

Counsel for Relator

/s/ Matthew J. Piers

Matthew J. Piers, mpiers@hsplegal.com
Juliet Berger-White, jberger-white@hsplegal.com
Charles Wysong, cwysong@hsplegal.com
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 W. Madison Street, Suite 4000
Chicago, IL 60602
312.580.0100

Steven Cohen, scohen@cohenlawgroup.com

COHEN LAW GROUP
70 West Madison Street, Suite 4000
Chicago IL 60602
312.327.8800

Erika Kelton, ekelton@phillipsandcohen.com

Peter Budetti, pbudetti@phillipsandcohen.com
Samuel Brown, sbrown@phillipsandcohen.com
PHILLIPS & COHEN LLP
2000 Massachusetts Ave. NW
Washington, DC 20036
202.833.4567

Attorney for Defendant Blue Cross Blue Shield of Michigan Mutual Insurance Company

/s/ Heather M. O'Shea

Heather M. O'Shea, hoshea@jonesday.com
Elizabeth J. Marino, ejmarino@jonesday.com
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, IL 60601
312.782.3939

Arthur T. O'Reilly, atoreilly@jonesday.com

JONES DAY
150 West Jefferson, Suite 2100
Detroit, MI 48266
313.733.3939

Counsel for Defendant Health First Health Plans, Inc.

/s/ Robert T. Rhoad

Robert T. Rhoad,
rrhoad@sheppardmullin.com
Erica Kraus, ekraus@sheppardmullin.com
Michael W. Paddock,
mpaddock@sheppardmullin.com
SHEPPARD MULLIN RICHTER & HAMPTON LLP
2099 Pennsylvania Ave., NW, Suite 100
Washington, D.C. 20006
202.747.1900

Danielle Vrabie,
dvrabie@sheppardmullin.com
SHEPPARD MULLIN RICHTER & HAMPTON LLP
30 Rockefeller Plaza
New York, NY 10112
212.653.8701

Kevin M. Cloutier,
kcloutier@sheppardmullin.com
Mikela T. Sutrina,
msutrina@sheppardmullin.com
Sheppard, Mullin, Richter & Hampton, LLP
70 West Madison Street, Suite 4800
Chicago, IL 60602
312.499.6300

Counsel for Blue Cross Blue Shield of North Carolina, Asuris Northwest Health, Regence Blue Cross Blue Shield of Oregon, Regence BlueCross BlueShield of Utah, Regence BlueShield, Regence BlueShield of Idaho

/s/ Christina M. Egan

Christina M. Egan,
cegan@mcguirewoods.com
David J. Pivnick,
dpivnick@mcguirewoods.com
MCGUIRE WOODS LLP
77 West Wacker Drive, Suite 4100
Chicago, IL 60601
312.750.8644

Counsel for Providence Health Plan, Providence Health Assurance

/s/ Jeffrey B. Coopersmith

Jeffrey B. Coopersmith,
jeffcoopersmith@dwt.com
Lauren B. Rainwater,
laurenrainwater@dwt.com
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
206.622.3150

Todd C. Jacobs, tjacobs@bradleyriley.com
David M. Caves, dcaves@bradleyriley.com
BRADLEY RILEY JACOBS PC
320 West Ohio Street, Suite 3W
Chicago, IL 60654
312.281.0295

Attorney for Defendant Priority Health

/s/ Sheila M. Prendergast

Sheila M. Prendergast, sprendergast@mwe.com
John C. Kocoras, jkocoras@mwe.com
MCDERMOTT WILL & EMERY
444 West Lake Street
Chicago, IL 60606
312.372.2000

Jason M. Crow, crowj@millerjohnson.com
Jeffrey G. Muth, muthjg@millerjohnson.com
MILLER JOHNSON
45 Ottawa Avenue SW, Suite 1100
Grand Rapids, MI 49503
616.831.1745