

Hospital Must Pay Aetna \$41M For Out-Of-Network Scheme

By **Michelle Casady**

Law360, Houston (January 3, 2017, 7:39 PM EST) -- A Texas federal judge has ruled that Humble Surgical Hospital LLC must pay Aetna Life Insurance Co. for a scheme in which it reaped millions by enticing patients to use out-of-network services and charging excessive fees, with Aetna electing to reap the highest possible recovery of \$41.4 million.

U.S. District Judge Lynn N. Hughes wrote Saturday that Aetna had three options for recovery in the suit. It could take \$41.4 million, which is the amount it paid Humble from August 2010 through October 2013; \$20.2 million, which is the difference between what Aetna paid as an out-of-network provider from August 2010 through May 2012 and what it would have paid an in-network provider; or \$12.4 million, which is the amount of kickbacks Humble paid physicians with Aetna's money.

Judge Hughes wrote that Aetna has clean hands in the matter, while “Humble is filthy up to the elbows from lies and corrupt bargains.”

“This case has had a tortured existence, and the bulk of the activity has been trying to force Humble to tell the truth,” he wrote in his opinion. “Humble has conducted guerrilla warfare against this court, Aetna, the patients and common decency. Humble has been repeatedly warned about its conduct. It has been given the opportunity to reform and has not done so. Its answer and counterclaims are struck as a consequence of its malfeasance.”

A spokeswoman for Aetna confirmed to Law360 Tuesday that the insurer would elect to take \$41.4 million from Humble.

“We are pleased with the ruling,” Aetna wrote in an emailed statement. “After considering the arguments presented by both sides, Judge Hughes correctly ruled that Humble's waiver of patient fees and payment of kickbacks to referring physicians are illegal. This ruling reinforces Aetna's belief that providers must be open, honest and transparent when submitting claims to insurers.”

Counsel for Humble Surgical Hospital declined to comment when reached Tuesday afternoon.

Aetna accused Humble Surgical Hospital LLC of attracting more customers by routinely waiving higher co-payments that typically discourage patients from patronizing out-of-network providers. It then billed Aetna rates that included \$99,750 for ear wax removal, \$74,000 for bunion surgery and \$139,000 to repair a crooked toe, according to the complaint.

Aetna is represented by Kendall M. Gray, Kelsey Jenae Hope, Brian C. Pidcock, John Bruce Shely and Laura M. Trenaman of Andrews Kurth Kenyon LLP.

Humble Surgical Hospital LLC is represented by Robert H. Bateman and Adam Brett Chambers of Bateman Pugh Chambers PLLC and Kevin Dean Jewell of Chamberlain Hrdlicka White Williams & Aughtry.

The case is Aetna Life Insurance Company v. Humble Surgical Hospital LLC, case number 4:12-cv-01206, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Dani Kass. Editing by Philip Shea.

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