Preface

After the long-anticipated United States Supreme Court opinion on the constitutional challenges to the Affordable Care Act (ACA) the uncertainty about the fate of the law is settled. Chief Justice John Roberts concluded the majority opinion by stating, “But the Court does not express any opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people.” One way the people will be heard is through more litigation and regulations. The harsh reality is that the stage is now set for a new wave of potential litigation against managed care organizations resulting from the multiple provisions in the ACA. Implementation is now the focus and numerous questions are unanswered. Will states be able to comply with the ACA’s numerous requirements including management of health insurance exchanges and expanded Medicaid enrollment? Uncertainty remains as to the specific rules that will govern employer-provided group health plans. Litigation involving the interaction of employer-provided health benefits with the state-sponsored health insurance exchanges is also anticipated. A current lack of clear regulatory guidance will inevitably lead to more legal challenges and litigation. New trends in provider litigation under the ACA will include medical loss ratios, non-par emergency room reimbursement claims, antitrust issues, provider terminations, network adequacy, and discrimination claims. Managed care litigation and legal challenges in its various forms is anticipated to proliferate in 2013–2014.

Against the backdrop of the ACA and its impact on the delivery of health care in the United States, Bloomberg BNA and the ABA Health Law Section are publishing the SECOND EDITION OF MANAGED CARE LITIGATION, an important authoritative “must have” resource for practitioners to help them rapidly focus on key issues and expertly advise their clients. This book is written by managed care legal experts for attorneys—experienced or new to the field—with the intention of providing a comprehensive analysis of the myriad of complex issues in managed care litigation. The original edition and its annual supplements provided invaluable legal research and discussion of important managed care disputes. The SECOND EDITION OF MANAGED CARE LITIGATION is dedicated to staying at the forefront of issues affecting the health care industry. Every health care library should include this treatise to assist managed care organizations, providers, and health insurers to better understand and analyze the current state of health care litigation and the risks presented during this period of unprecedented historic change.
The scope of this Second Edition remains broad, encompassing numerous distinct topics in managed care. Each chapter covers its topic thoroughly and the book also contains important updated comprehensive appendices and tables pertaining to state laws and applicable federal regulations. The chapters in Managed Care Litigation are authored by some of the best lawyers and law firms specializing in managed care and expertly cover the gamut of complex issues ranging from:

- The ACA provisions relating to mandatory coverage and limitations on rating factors and rate setting issues, medical loss ratios, and retroactive rate reviews/premium refunds;
- Class actions pertaining to reimbursement, medical necessity determinations, eating disorders/mental health benefits litigation, medical data privacy breaches, ACA anti-discrimination provisions, coverage of essential health benefits, class action arbitration provisions/waivers;
- ERISA litigation, standard of review decisions, the aftermath of Cigna v. Amara, remedies, conflicts of interest, deference standards, and new and emerging theories of fiduciary liability;
- Mental health benefit litigation, mental health parity laws, and recent claims against behavioral health and substance abuse plans and ERISA plans;
- Antitrust litigation including unfair trade practices, most-favored nation clauses and anti-competitive actions, accountable care organizations, exclusivity, exclusionary conduct, challenges to illegal bundling, and conspiracy allegations;
- Ongoing provider reimbursement billing and coding, overpayment and underpayment issues, provider termination and exclusion from network litigation, fair hearing issues, balance billing, fraudulent billing, false claims act violations, bad faith claims arising out of denials of health benefits or payments; vicarious liability and agency theories; prompt pay statutes; and
- Litigation developments involving managed care in federal health programs including Medicare, Medicaid, FEHBP, and TRICARE, including the Federal False Claims Act, Anti-Kickback, Stark issues, and “whistle blower” qui tam actions.

This timely reference is organized so that in-house counsel, government lawyers, and outside managed care counsel and executives can quickly access the information they need, review the legal theories and process involved, and stay current on the rapidly developing case law, regulations and litigation issues.

This Second Edition has been a very labor intensive effort by all who contributed to it. I have had the privilege of being the Editor-in-Chief of this book for several years and I want to acknowledge the work and effort of my colleague and friend, Julie Barnes, the original Editor-in-Chief, for all of her initial contributions in the preparation of this treatise. I am very grateful to the professionalism and invaluable contributions of our authors and the attorneys and
staff supporting them. It is incredible how much time is required to write each chapter and to stay abreast of the constantly evolving case law and statutes in healthcare. The authors of MANAGED CARE LITIGATION are highly experienced experts in this field who deserve to be recognized for the scholarly discussion they have provided to educate and assist all attorneys who practice in this highly specialized area. Their analysis and thorough discussion of the applicable law and emerging trends impacting managed care litigation have illuminated important legal issues and will serve as important educational resource for the entire legal community.

I would be remiss if I did not provide a special acknowledgement and thanks to my law firm, Sedgwick LLP. This has been a very time consuming project and I am extremely grateful to my firm and partners who have supported my efforts as well during the researching, drafting, and editing of this book. The firm’s dedication to the field of legal education and the high quality of its lawyers is readily apparent by the numerous contributing authors in this book who are from Sedgwick.

On behalf of all the authors, I would like to express our gratitude to Jim Fattibene and Elizabeth Turqman of Bloomberg BNA and the leadership of the ABA Health Law Section for their invaluable support and dedication to this project. Their vision and recognition of the importance of offering this educational tool in one of the most complex and evolving areas of law is to be commended. I have made many friends in the ABA Health Law Section and the ability to share ideas, discuss and debate new trends and cases in this area has proved invaluable. There are too many of you to name but buy this book any way! You will enjoy it.

Finally, on a personal note, I am eternally grateful to my family, Carol, Jonathan, and Jennifer, for their constant support, understanding and love.

It takes a great team to complete such a massive undertaking and I am greatly honored to be a part of this book.

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