

AUNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

QUALITY INFUSION CARE INC,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. H-06-01557
	§	
UNICARE HEALTH PLANS OF TEXAS	§	
INC,	§	
	§	
Defendant.	§	

**ORDER FOR REMAND**

Before the Court is the plaintiff, Quality Infusion Care, Inc.'s, motion to remand this case and the defendant, Unicare Health Plans of Texas' response. The Court has reviewed the motion and response and supporting documents and determines that this case should be remanded.

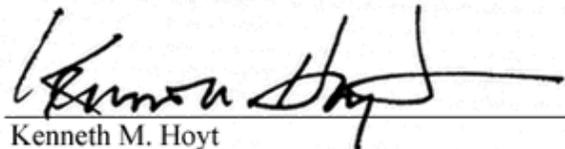
The plaintiff is a licensed pharmacy that specializes in providing home infusion therapy to persons who suffer serious illnesses. One of the persons that the plaintiff provided home infusion therapy was T.M., an employee of Baylor College of Medicine which provided health care through the defendant, Unicare.

The evidence is undisputed that the patient was prescribed a course of home infusion therapy. And, the evidence is clear that T.M. chose to obtain that therapy through the plaintiff. In exchange for the services provided, T.M. assigned all her rights, benefits and claims under the Plan to the plaintiff. The defendant assigns as its sole basis for the denial of benefits the fact that the plaintiff was/is an "out-of-network provider." The Court is of the opinion that the dispute between these parties is one that is covered by the Texas Any Willing Provider statute and, therefore, is not preempted by ERISA.

Section five (5) of the defendant's Group Service Agreement provides a procedure by which non-participating physicians and providers may present claims for reimbursement for health care services provided. Hence, the threshold issue of whether the plaintiff is entitled to reimbursement is an insurance regulation issue, not a coverage issue. The failure to process and pay benefits for non-participant providers does not give rise to an ERISA cause of action because the remedy sought goes beyond ERISA-regulated benefits. *See Actman Health Inc. v. Davila*, 542 U.S. 200 (2004).

It is, therefore, Ordered that the Court lacks subject matter jurisdiction and that the case should be and is REMANDED to Harris County Justice Court Precinct 5, Place 1, pursuant to 28 U.S.C. § 1447(c).

SIGNED and ENTERED this 27th day of July, 2006.



Kenneth M. Hoyt  
United States District Judge