

No. 13-4608

United States Court of Appeals
for the
Second Circuit

FAIRFIELD COUNTY MEDICAL ASSOCIATION, ET AL.,

Plaintiffs-Appellees,

v.

UNITED HEALTHCARE OF NEW ENGLAND, INC., ET AL.

Defendants-Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF ON BEHALF
OF UNITED STATES SENATOR RICHARD BLUMENTHAL IN
SUPPORT OF PLAINTIFFS-APPELLEES**

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Attorneys for United States Senator Richard Blumenthal, Amicus Curiae

MOTION INFORMATION STATEMENT

Docket Number(s): 13-4609 Caption [use short title] _____

Motion for: Leave to file Amicus Curiae brief The Fairfield County Medical Association, et al.
Plaintiffs-Appellees,
v.
United Healthcare of New England, Inc., et al.
Defendants-Appellants.

Set forth below precise, complete statement of relief sought:
Leave to file an Amicus Curiae brief on behalf of
United States Senator Richard Blumenthal
in support of The Fairfield County Medical
Association, et al

MOVING PARTY: U.S. Senator Richard Blumenthal OPPOSING PARTY: United Healthcare of New England, Inc., et al.
 Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: William M. Bloss OPPOSING ATTORNEY: Catherine E. Stetson
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Court-Judge/Agency appealed from: U.S. Dist. Ct. District of Connecticut, Hon. Stefan R. Underhill

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know


Does opposing counsel intend to file a response:
 Yes No Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No
Has this relief been previously sought in this Court? Yes No
Requested return date and explanation of emergency: _____

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney:  Date: 12/30/2013 Service by: CM/ECF Other [Attach proof of service]

United States Senator Richard Blumenthal hereby moves this Court for leave to file an *amicus curiae* brief in support of the Plaintiffs-Appellees. Plaintiffs-Appellees are medical societies for two counties in Connecticut that have sought and obtained injunctive relief against Defendant-Appellant UnitedHealthcare prohibiting it from terminating certain doctors from UnitedHealthcare's Medicare Advantage Network. As a United States Senator whose constituents will be directly affected by the outcome of this appeal, the *amicus* holds a significant interest in the issues on appeal. As stated below, the *amicus* seeks to protect the interests of Connecticut patients who are enrolled in UnitedHealthcare's Medicare Advantage plans, as well as the interests of his constituent physicians who may be terminated from those plans. In accordance with the Federal Rules of Appellate Procedure and the Local Rules of this Court, the *amicus* respectfully request leave to file the brief that is attached hereto as Exhibit A. If granted leave to file, the *amicus* will conform to the rules set out for *amici* in the Federal Rules of Appellate Procedure and the Rules of this Court.

STATEMENT OF INTEREST OF THE AMICUS CURIAE

Amicus Richard Blumenthal ("Senator Blumenthal") is a duly elected United States Senator representing the state of Connecticut. Senator Blumenthal seeks to protect the interests of Connecticut patients who would be adversely affected by a reversal of the District Court's decision. In this case, the sudden removal of over

2,200 Connecticut health care providers from the Medicare Advantage plans will cause significant and irreversible damage to Connecticut patients. In the absence of an injunction, Connecticut patients will immediately face the Hobson's choice of giving up their current physicians, thereby risking medical errors arising from discontinuity of care, or paying much higher rates to retain their current physicians. Precluding patients from affordable access to their current physicians on such a massive scale, particularly without adequate notice, threatens patient safety in Connecticut.

As a United States Senator duly elected by the people of Connecticut, Senator Blumenthal seeks to represent the interests of his constituency, in this case those of patients and physicians located in Connecticut. The issues involved in this case are of significant importance to Senator Blumenthal, as many of his constituents will be impacted by UnitedHealthcare's decision to abruptly sever the physician-patient relationship of thousands of Connecticut patients.

Many of the affected patients are especially vulnerable, as they suffer from critical conditions requiring continuous care (e.g., cancer, heart disease, diabetes) and may face hardship due to the disruption of their continuity of care as they seek new physicians within the UnitedHealthcare network. These patients also risk losing the trust and intimacy that is cultivated through long-standing, consistent care, which is essential to the patient-physician relationship. While the

consequences of these changes will impact all patients enrolled in UnitedHealthcare's Medicare Advantage plans, the greatest damage will likely be to the most vulnerable of Senator Blumenthal's constituents.

**THE RELEVANCE AND IMPORTANCE
OF AMICUS FILING IN THIS CASE**

UnitedHealthcare seeks to have this Court lift the U.S. District Court's preliminary injunction which enjoins UnitedHealthcare from terminating more than 2,200 health care providers from its Medicare Advantage network, from notifying UnitedHealthcare's Medicare Advantage customers that certain providers will be terminated from said network as of February 1, 2014, and from removing or failing to advertise or market the affected physicians in UnitedHealthcare's 2014 directories for the Medicare Advantage network.

As the District Court has found, UnitedHealthcare's actions will cause irreparable harm to Connecticut patients and physicians alike should the preliminary injunction be lifted. These injuries include: patient confusion as to how best to obtain adequate and affordable health care, the dissolution of long-standing relationships between patients and their physicians, and damage to the reputations of physicians removed from UnitedHealthcare's Medicare Advantage network.

Senator Blumenthal has an extensive history of advocating for and protecting the interests of his constituents in an effort to ensure that they have adequate access to the necessary and appropriate means of quality health care

services. Senator Blumenthal believes that no entity should prevent or hinder any constituent's ability to receive in a timely manner the care and treatments that are medically necessary. Senator Blumenthal has actively engaged in efforts to expand health insurance options and the provision of proper medical care, both through legislative initiatives and personal constituent services.

CONCLUSION

For the foregoing reasons, movant respectfully requests leave to file an *amicus curiae* brief on behalf of the Plaintiffs-Appellees, in the form of the brief attached hereto as Exhibit A.

Dated: December 30, 2013

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BY:



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ADDENDUM

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* certify that it is a non-profit corporation(s) that does not have any parent corporation(s), and that no publicly held corporation(s) own 10% or more of any of its stock.

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**AMICUS CURIAE BRIEF ON BEHALF OF UNITED STATES SENATOR
RICHARD BLUMENTHAL IN SUPPORT OF PLAINTIFFS-APPELLEES
AND IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S
PRELIMINARY INJUNCTION**

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

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UnitedHealthcare, the largest provider of Medicare Advantage insurance in the state of Connecticut, seeks to terminate more than 2,200 health care providers from its Medicare Advantage Network.¹ In the absence of a preliminary injunction, UnitedHealthcare will immediately prevent thousands of Connecticut patients from continuing to treat with their chosen physicians. Since the termination became public, patients in Connecticut have faced significant confusion regarding their ability to continue long-standing relationships with their treating physicians. The decision of the District Court has provided, at a minimum, the ability to maintain the status quo and protect patient safety in the short term. In the absence of the injunction, physician-patient relationships throughout Connecticut would be immediately, significantly and irreparably harmed threatening patient safety. Accordingly, the amicus, United States Senator Richard Blumenthal, urges this Court to affirm the District Court’s preliminary injunction order.

STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

Amicus Richard Blumenthal (“Senator Blumenthal”) is a duly elected United States Senator representing the state of Connecticut. Senator Blumenthal seeks to protect the interests of Connecticut patients who would be adversely

¹ No party or party’s counsel has authored this brief in whole or in part or contributed money intended to fund the preparation or submission of this brief. No person other than the *Amicus* or his counsel have contributed money intended to fund the preparation or submission of this brief.

affected by a reversal of the District Court's decision. In this case, the sudden removal of over 2,200 Connecticut health care providers from the Medicare Advantage plans will cause significant and irreversible damage to Connecticut patients. Precluding patients from affordable access to their current physicians on such a massive scale, particularly without adequate notice, threatens patient safety in Connecticut.

As a United States Senator duly elected by the people of Connecticut, Senator Blumenthal seeks to represent the interests of his constituency, in this case those of patients and physicians located in Connecticut. The issues involved in this case are of significant importance to Senator Blumenthal, as many of his constituents will be impacted by UnitedHealthcare's decision to abruptly sever the physician-patient relationship of thousands of Connecticut patients.

Many of the affected patients are especially vulnerable, as they suffer from critical conditions requiring continuous care (e.g., cancer, heart disease, diabetes) and may face hardship due to the disruption of their continuity of care as they seek new physicians within the UnitedHealthcare network. These patients also risk losing the trust and intimacy that is cultivated through long-standing, consistent care, which is essential to the patient-physician relationship. While the consequences of these changes will impact all patients enrolled in

UnitedHealthcare's Medicare Advantage plans, the greatest damage will likely be to the most vulnerable of Senator Blumenthal's constituents.

Senator Blumenthal has an extensive history of advocating for and protecting the interests of his constituents in an effort to ensure that they have adequate access to the necessary and appropriate means of quality health care services. Senator Blumenthal believes that no entity should prevent or hinder any constituent's ability to receive in a timely manner the care and treatments that are medically necessary. Senator Blumenthal has actively engaged in efforts to expand health insurance options and the provision of proper medical care, both through legislative initiatives and personal constituent services.

ARGUMENT

I. CONNECTICUT PATIENTS WILL BE IRREPARABLY HARMED IN THE ABSENCE OF AN INJUNCTION

In the absence of an injunction, the patients of the over 2,200 terminated physicians will face irreparable harm by being effectively denied access to their long-standing and chosen physicians. Connecticut patients will immediately face the Hobson's choice of giving up their current physicians, thereby risking medical errors arising from discontinuity of care, or paying much higher rates to retain their current physicians.

The District Court, in issuing the preliminary injunction, found that “the disruption of physician-patient relationships results from the high cost of medical care in this country and the structure of health insurance reimbursement plans that distinguish between in-network and out-of-network service providers. The terminated providers’ patients could continue their existing relationship with the affected physicians only if they are able and willing to pay substantially greater sums to obtain those medical services.” In addition, the District Court noted that the terminated Connecticut physicians will also suffer reputational and other irreparable harms.

The individual Connecticut residents who have contacted Senator Blumenthal’s office have shared experiences that affirm the wisdom of the District Court’s observations and decision in this case. As detailed in Exhibit 1 to the attached Declaration of Grady Keefe:

1. Mr. David Baker of Branford, CT (age 75) received notice on November 9, 2013 that he would no longer be able to receive his medically necessary cancer treatments at Smilow Cancer Hospital in New Haven, CT as a result of UnitedHealthcare dropping his treatment team from their network. Mr. Baker has terminal cancer and continuity of health care providers is essential. His options were to find another insurer on short notice that would cover his provider or find another health care provider. Mr. Baker related that he relies on his 79-year-old wife Ann to get him to and from his cancer treatments and locations outside of New Haven would prove difficult for her to access as opposed to Smilow, which is convenient and familiar to the Baker family.
2. Mr. Robert McLellan of Madison, CT (age 80) received notice on November 8, 2013 that the primary caretakers he and his wife Marjorie

(age 80) rely on through Yale Medical Group (YMG) would no longer be participating with his UnitedHealthcare Medicare Advantage plan. Mr. McLellan related that he depends on the Medicare Advantage plan to assist in covering his medically necessary leukemia, kidney, hypertension and blood disorder treatments.

3. Ms. Patricia Berardino of Branford, CT was informed by her doctor in early November that she would no longer be able to continue her medically necessary cancer treatments at Yale as of February 2, 2014 because her treatment team was being terminated from the network. With less than one month's notice, Ms. Berardino related that she was forced to either find another insurer that would cover her providers, find another health care provider or travel more than 20 miles to the nearest provider.
4. Mr. John Maronich of Trumbull, CT received notice in or about late October that three of his physicians' groups would no longer be participating in UnitedHealthcare's Medicare Advantage plan. Mr. Maronich related that he did not receive any formal notice from UnitedHealthcare about this change in policy until he himself called UnitedHealthcare on November 13, 2013 in relation to a separate matter. Several days later, Mr. Maronich states that he received a letter from UnitedHealthcare confirming the terminations. Since 2005 Mr. Maronich relied upon his Medicare Advantage plan to help him receive access to treatments for his diabetes, blood disorder, lung disease, neuropathy, glaucoma, atrial fibrillation, high blood pressure, high cholesterol, high triglycerides, kidney disease, and liver complications. In order to minimize and manage the effects of these ailments Mr. Maronich requires a team of approximately twelve physicians and requires daily treatments, which include the use of a nebulizer, injections of insulin shots, and oxygen. As a result of UnitedHealthcare's termination of providers, Mr. Maronich will be forced to either stop treatments with a minimum of five of his doctors or find another health care insurer who will cover them. Furthermore, Mr. Maronich relates that he does not have access to a computer, which means that he is at an even greater disadvantage when it comes to exploring available options and making potentially drastic changes within an already limited time frame.
5. Mr. Ted Cornell of West Haven, CT joined a UnitedHealthcare Medicare Advantage plan on October 16, 2013. Less than one month later, on

November 8, 2013, Mr. Cornell was informed by Yale Medical Group that they would likely not be participating in the UnitedHealthcare Medicare Advantage program in 2014. This decision would prevent Mr. Cornell from being able to continue treatments from his primary care physician at Yale. He related that his options were to find another insurer on short notice that would cover his providers, find another health care provider or travel a greater distance to another provider for the same level of care and treatment that was previously offered at a closer, more convenient location.

6. Mr. Robert Buccieri of Norwalk, CT suffers from End Stage Renal Disease and as a result of UnitedHealthcare dropping his nephrologist, Dr. Paul Weiner of Yale Medical Group, he will be forced to consider finding another insurance provider in less than one month so he can undergo his already scheduled kidney transplant.

Further, the amicus received a number of letters from providers that detailed the impact on their patients:

1. Mr. Michael G. Brand, President of Danbury Orthopedic Associates, P.C. received notice of UnitedHealthcare's decision to terminate their contract "without cause" just four months after entering into a Medical Group Participation Agreement with UnitedHealthcare. With respect to how this termination by UnitedHealthcare will impact patients, Mr. Brand states: "Even more egregious is the disruption the proposed amendment will cause for the patient-physician relationship, creating a barrier to care for our elderly patients by eliminating 20 orthopedic subspecialists in our group from the UHC network and reducing the number of available doctors in the Danbury community to four. The patients will suffer due to delays in access to care."
2. Dr. Paul J. Beauvais and Dr. Robert Hendrikson of Northeast Orthopedic and Hand Surgery, P.C., in Waterbury, CT state that their practice is "the only practice in the city of Waterbury serving the UnitedHealthcare Medicare population" and that, in their professional medical opinion, it is "not acceptable to terminate the only orthopedic practice servicing the Medicare population in the city of Waterbury." Dr. Beauvais and Dr. Hendrikson make note of a review their office conducted, which determined that many of their UnitedHealthcare Medicare Advantage

patients are also Medicaid beneficiaries. This compelled them to conclude that the termination would, “at the very best, force them to travel long distances for care, again if care can even be coordinated for them in a reasonable period of time.”

3. Dr. Michael J. Flanagan of Urology Specialists, P.C., in Middlebury, CT works for the only practice in the Waterbury and Meriden area that “offers comprehensive adult urologic care” at Waterbury Hospital Health Center, St. Mary’s Hospital, and MidState Medical Center. In his appeal to United, Dr. Flanagan writes, “By excluding us from the panel, there is a blatant disregard to the continuity and quality of local care for our patients, and comes at a time in many of our patients’ lives when they may not be as independent, could be debilitated or may have difficulty traveling; and thus effectively restricting their access to prompt appropriate care for their urologic care.” He indicates that the patients may be unable to find acceptable and accessible quality care for treatments of their cancers, infections and other medical conditions.
4. Dr. Robert D. Carlson of Stafford Springs, CT states that at least 58 of his practice’s patients could potentially be impacted directly as a result of his being terminated from the Medicare Advantage network. In a letter, Dr. Carlson notes that his practice is “the only full-time Family Medicine practice in the town of Stafford Springs.” Dr. Carlson notes that his practice consists of approximately 38% Medicare beneficiaries and thus such a termination would prove to be financially devastating to his business and create a “next to impossible situation” for his many patients who would be left without a primary care provider in their town.
5. Mr. Mark S. Thompson, Executive Director of the Fairfield County Medical Association, has informed the amicus of four specific patients with HIV/AIDS who have been receiving treatments from Dr. Dennis Williams in Bridgeport. Dr. Williams has been dropped by UnitedHealthcare’s Medicare Advantage plan. One of these patients will be losing four doctors, including Dr. Williams. This patient has been referred to a substance abuse doctor, and not a primary care physician, despite his past medical treatment by a primary care physician for HIV/AIDS. Another patient is also being referred to a substance abuse doctor even though it has been medically recommended that the patient continue with a primary care physician. The third patient has been

referred to a physician in an urgent care center and their staff has acknowledged that they do not act as a primary care office.

These examples confirm the District Court's finding of irreparable harm inasmuch as "the disruption of the physician-patient relationship can cause irreparable harm that justifies issuing preliminary injunctive relief, particularly when the patient belongs to a vulnerable class or may have a deep trust relationship with the physician because of the serious nature of the patient's illness or medical needs." The examples related above are just the tip of the iceberg. The termination of 2,200 physicians from a health care plan in a state the size of Connecticut creates enormous risks to patient safety on a state-wide basis.

CONCLUSION

For the foregoing reasons, the Amicus respectfully submits that the Court should affirm the District Court's order granting the preliminary injunction.

Dated: December 30, 2013

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) because it contains 2,216 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Office Word 2007 in Times New Roman 14 point font.

KOSKOFF, KOSKOFF & BIEDER

BY:  _____

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**DECLARATION OF GRADY KEEFE
IN SUPPORT OF PLAINTIFFS-APPELLEES**


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Attorneys for United States Senator Richard Blumenthal, Amicus Curiae

I, GRADY KEEFE, declare as follows:

1. I serve on the staff of United States Senator Richard Blumenthal and currently serve in the capacity of Constituent Liason for Senator Blumenthal;
2. In this capacity, I am made aware of the issues of individual constituents who contact Senator Blumenthal regarding matters of concern in Connecticut;
3. In this capacity, I have compiled details of the circumstances of individual constituent patients and physicians who will be affected by the actions of United Healthcare at issue in this appeal;
4. These constituents voluntarily contacted Senator Blumenthal's office and made their complaints and medical information a matter of public record in an effort to preserve access to their physicians.
5. A true and accurate summary of information obtained by Senator Blumenthal's office concerning the experiences of Connecticut patients and physicians is attached as Exhibit 1.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



GRADY KEEFE

EXHIBIT 1

Summary of Constituent Contacts

1. Mr. David Baker of Branford, CT (age 75) received notice on November 9, 2013 that he would no longer be able to receive his medically necessary cancer treatments at Smilow Cancer Hospital in New Haven, CT as a result of UnitedHealthcare dropping his treatment team from their network. Mr. Baker has terminal cancer and continuity of health care providers is essential. His options were to find another insurer on short notice that would cover his provider or find another health care provider. Mr. Baker related that he relies on his 79-year-old wife Ann to get him to and from his cancer treatments and locations outside of New Haven would prove difficult for her to access as opposed to Smilow, which is convenient and familiar to the Baker family.
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