MANAGED CARE LITIGATION UPDATE®

Year End Reflections ...

Managed Care Litigation Update® has entered its third year of publication. Many thanks to all who have made this newsletter an invaluable resource for those practicing in this area.

The Managed Care Litigation Update® database contains information on approximately 1,500 cases. I am updating the database with the name of the presiding Judge for each case, which will enable a Subscriber to search (for example) all managed care cases in which Judge "Smith" has presided. Other contemplated upgrades include tracking significant case events and retrieval of past Managed Care Litigation Update® issues.

Early in 2017, I hope to "go live" with a web page that will let Subscribers log in to the database and perform key word searches for a particular Judge, a given insurer, facility, physician, etc. If you have an interest in being a "beta-tester," drop me an email.

Best wishes to all for health and prosperity in 2017.

JMH

Recently filed actions

Mahlon D. and Emily D. v. CIGNA Health and Life Insurance Company, et al., U.S.D.C. N.D. CA, Doc. No. 3:16-cv-07230-JSC, (filed Dec. 19, 2016). Parent seeks recovery of mental health benefits on behalf of daughter associated with care received at Change Academy at Lake of the Ozarks, a residential treatment facility. Coverage was approved for the first three and a half months, but denied thereafter. Following an external appeal, the denial was modified with approval of an additional four months out of the seventeen month stay as being medically necessary.

Brenten George, et al. v. CNH Health and Welfare Benefit Plan, et al., U.S.D.C. E.D. WI, Doc. No. 2:16-cv-01678-JPS, (filed Dec. 19, 2016). Putative class action in which members contend the health plan and Blue Cross Blue Shield of Wisconsin, as claims administrator, are processing OON claims as a percentage of Medicare reimbursement rate when the plans allegedly require OON claims to be paid at the prevailing charge in the geographic area. Plaintiffs contend "Defendants' use of a Medicare-based payment methodology for out-of-network claims violates the terms of the Plaintiffs' benefits Plans."

Marposs Corporation, et al. v. Blue Cross and Blue Shield of Michigan, U.S.D.C. E.D. MI, Doc. No. 2:16-cv-14480-AC-RSW, (filed Dec. 28, 2016). Plan sponsor contends BCBS Michigan, as administrator of its self-funded plan, skimmed additional administrative fees from Plan assets and seeks recovery of allegedly misappropriated funds. Similar cases reported in **prior MCLU issues**.

Thomas Harrell v. Blue Cross Blue Shield of Michigan, U.S.D.C. E.D. MI, Doc. No. 2:16-cv-14418-DML-EAS, (filed Dec. 20, 2016). Plaintiff seeks declaratory relief that "an external review by the Michigan Commissioner of Financial and Insurance Regulation cannot be made a mandatory element of the internal appeals process." "The channeling of benefits appeals [sic] to a public office is an inequitable shifting of cost on the part of Defendant BCBSM, tasking the taxpaying public with covering a portion of the cost of providing the statutorily mandated internal appeals process." The underlying dispute arose when BCBS Michigan allegedly underpaid an emergency air-medical transportation claim.

Health Services Network Hospitals, Inc. f/k/a Tenet Hospitals, Inc. v. Humana Insurance Company, et al., U.S.D.C. S.D. FL, Doc. No. 1:16-cv-25270-DPG, (filed Dec. 20, 2016). Removed action in which hospital system alleges "Defendants failed to negotiate reimbursement rates for renewal of the LOA [Letter of Agreement]" which terminated such that the hospital system was now out of network. For those OON claims, Defendants "substantially underpaid these claims at a fraction of fair and reasonable reimbursement rates." Hospital system seeks, *inter alia*, damages associated with failure to adequately reimburse for emergency and non-emergency services.

St. Raphael Surgery Center v. Aetna Life Insurance Company, U.S.D.C. W.D. TX, Doc. No. 5:16-cv-01295-OLG, (filed Dec. 22, 2016). Removed action in which surgical center alleges that it performed a cochlear device implantation on an individual who is a member of an Aetna health plan, having received prior approval for coverage of the service. "St. Raphael entered into a contract with Aetna for the payment of facility fees (code 69930) in the amount of $163,704.00 and the implant *[sic] (code L8614) in the amount of $115,950. Aetna paid only $774.00 for the facility fee and zero for the implant, an out of pocket cost." Basis for payment made is not stated in underlying Complaint.

Patricia P., et al. v. Aetna Life Insurance Company, U.S.D.C. D. UT, Doc. No. 1:16-cv-00175-PMW, (filed Dec. 27, 2016). Parents seeks recovery of mental health benefits associated with medical care and treatment at Island View Residential Treatment Center (now doing business as Elevations Residential Treatment Center). Benefits were paid for approximately three months of treatment in 2013, then for all of 2013 after external review overturned the denial of benefits for the remainder of 2013. Benefits were denied for approximately 7 months in 2014 on the grounds that "[t]reatment of this member could be provided at a lower level of care, or in another setting, e.g., partial hospitalization, intensive outpatient, or routine outpatient."

University Spine Center, on assignment of Frank S. v. Blue Cross Blue Shield of Illinois, U.S.D.C. D. NJ, Doc. No. 2:16-cv-09532-CCC-JBC, (filed Dec. 28 2016). Removed action in which medical provider and alleged assignee performed "a laminectomy and fusion of the cervical spine, among other procedures" and submitted charges of $507,934.00. "Defendant, however, only paid $5,639.72 for the above referenced services." Basis for payment made is not stated in the underlying Complaint.

IV Solutions, Inc. v. United Healthcare Insurance Company, U.S.D.C. C.D. CA, Doc. No. 2:16-cv-09598-JEM, (filed Dec. 28, 2016). Urgent/emergent health care provider of home infusion therapy and not a member of any insurance company's network alleges "Defendant devised a scheme to induce IV Solutions to continue providing services without the Defendant ever having

to pay all that it owed." Plaintiff seeks payment for "121 of the Defendant's members whom IV Solutions treated between 2010 and 2015 but for whom the Defendant has yet to pay IV Solutions' agreed-upon rates." Plaintiff seeks $47,301,910.74 in damages. Other actions by this provider reported in **MCLU Vol. 27, 37, 52**.

Lourdes Specialty Hospital of Southern New Jersey v. Aetna, Inc. and Tricare for Life, U.S.D.C. D. NJ, Doc. No. 1:16-cv-09538-NLH-KMW, (filed Dec. 28, 2016). Removed action in which facility seeks recovery of benefits, as alleged assignee, for billed charges in the amount of $311,765.61, less payment of $1,216.00. Plaintiff alleges the Aetna Plan was a Medicare plan, which denied payment because of "no valid referral." Plaintiff further alleges Tricare provides secondary coverage, which paid $1,216.00 as "the amount the patient would have been responsible for had Medicare [Aetna] made a payment" (brackets in original). Other actions filed by this provider and reported in **MCLU Vol. 65, 67, 68, 69**.

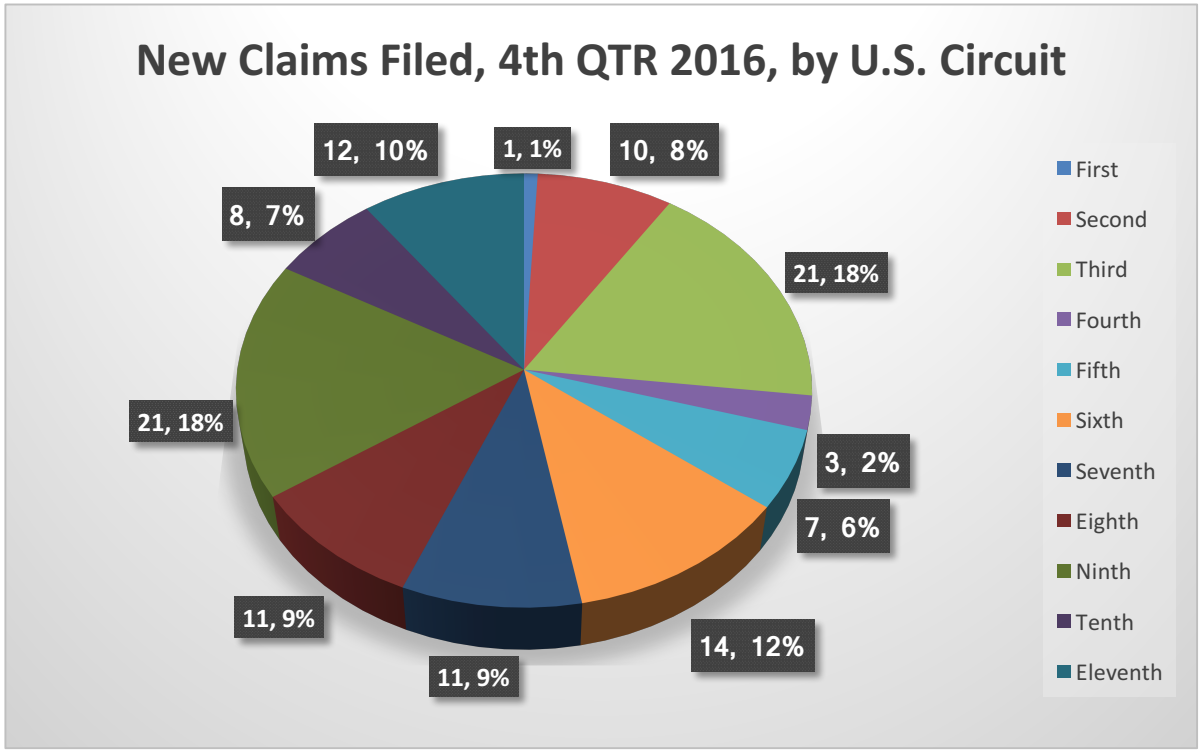
Louis Mazzarella v. Humana Insurance Company, et al., U.S.D.C. W.D. KY, Doc. No. 3:16-cv-00837-DJH, (filed Dec. 29, 2016). Putative RICO class action in which plaintiff contends defendants "required network pharmacies to charge insured patients unauthorized and excessive amounts for prescription drugs." "Defendants and/or their agents 'clawed back' these excessive payments by forcing the pharmacies to pay the unauthorized and excessive charges to Defendants and/or their agents after collecting them from the insureds." Actions alleging similar "claw backs" reported in **MCLU Vol. 66, 68, 69, 70**.

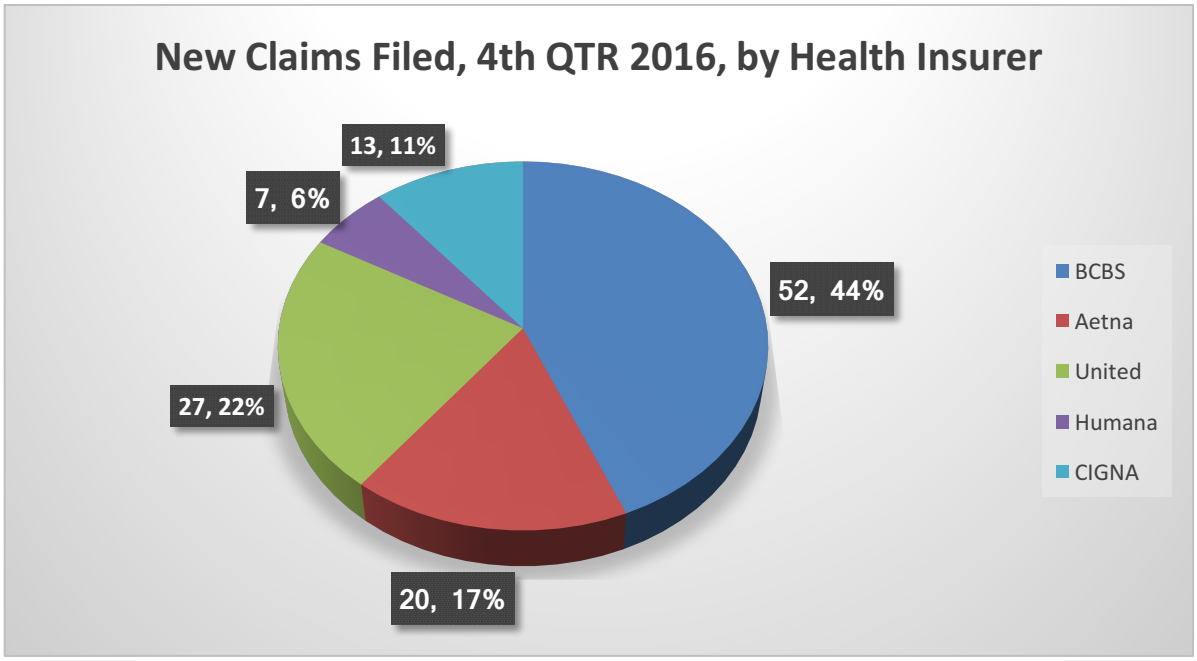
Thomas S., et al. v. Blue Cross Blue Shield of Illinois, et al., U.S.D.C. D. UT, Doc. No. 1:16-cv-00179-PMW, (filed Dec. 30, 2016). Parents seek recovery of $115,000 in mental health benefits associated with child's medical care and treatment at Island View Residential Treatment Center, a residential treatment center in Davis County, State of Utah (now known as Elevations). Claims were denied due to, *inter alia*, "alleged failure to meet clinical guidelines for residential treatment [and] that Henry could be safely and effectively treated at a lower level of care." On appeal, "BCBS asserted an exclusion of coverage for residential treatment under the terms of the Plan."

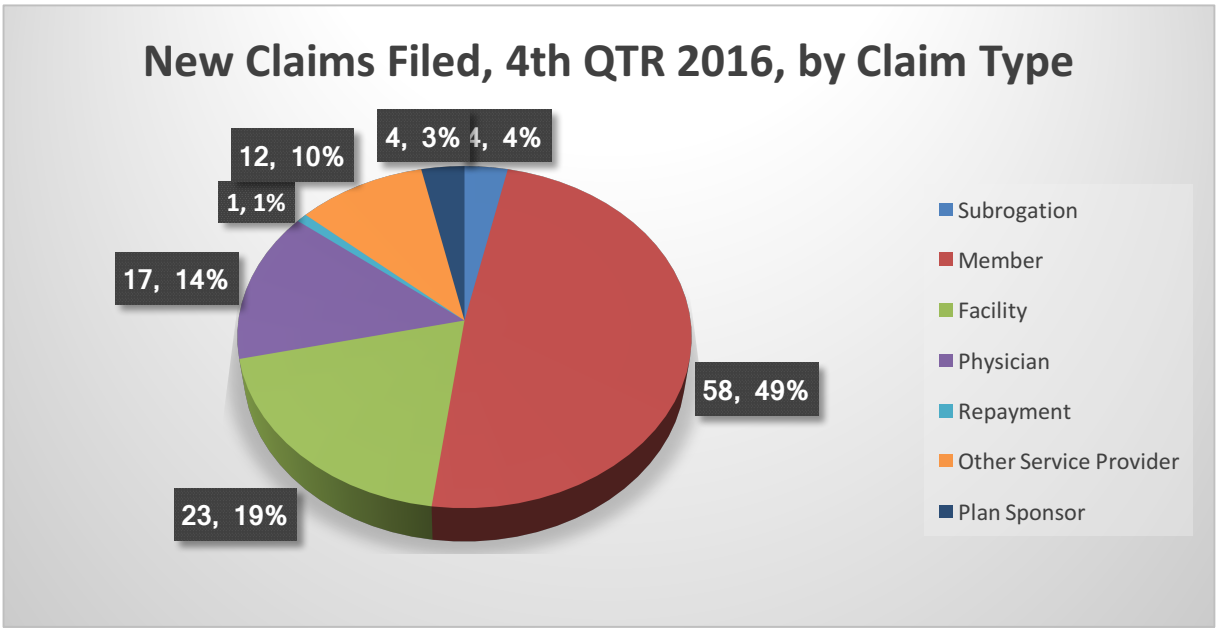
Highlights of 2016 Claims:

- Managed Care Litigation Update® covered 494 new case filings in 2016 versus 498 new case filings in 2015.
- 69 new cases were filed seeking coverage for treatment rendered at residential treatment centers versus 25 new cases in 2015.
- Of the 76 new case filings in 2016 involving disputes over mental health benefits, 14 alleged a violation of federal and/or state mental health parity laws. In 2015, 34 new cases were filed involving disputes over mental health benefits, 12 of which alleged a violation of federal and/or state mental health parity laws.
- 4 new cases were filed in 2016 seeking coverage for Harvoni® versus 10 new cases in 2015.
- 36 new putative class actions were filed in 2016 versus 28 new putative class actions in 2015. In 2016, 13 of those putative class actions alleged "claw backs" by network pharmacies.

Fourth Quarter 2016 Statistics







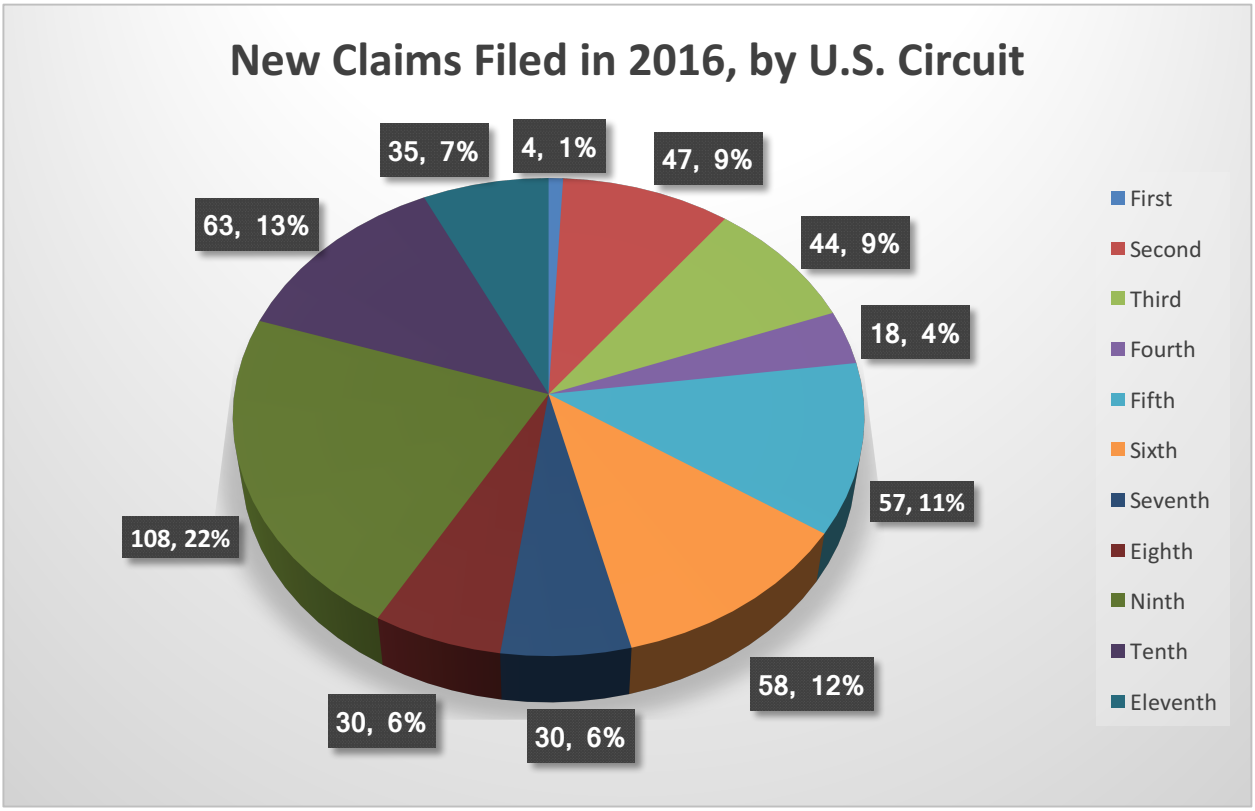
SUMMARY:

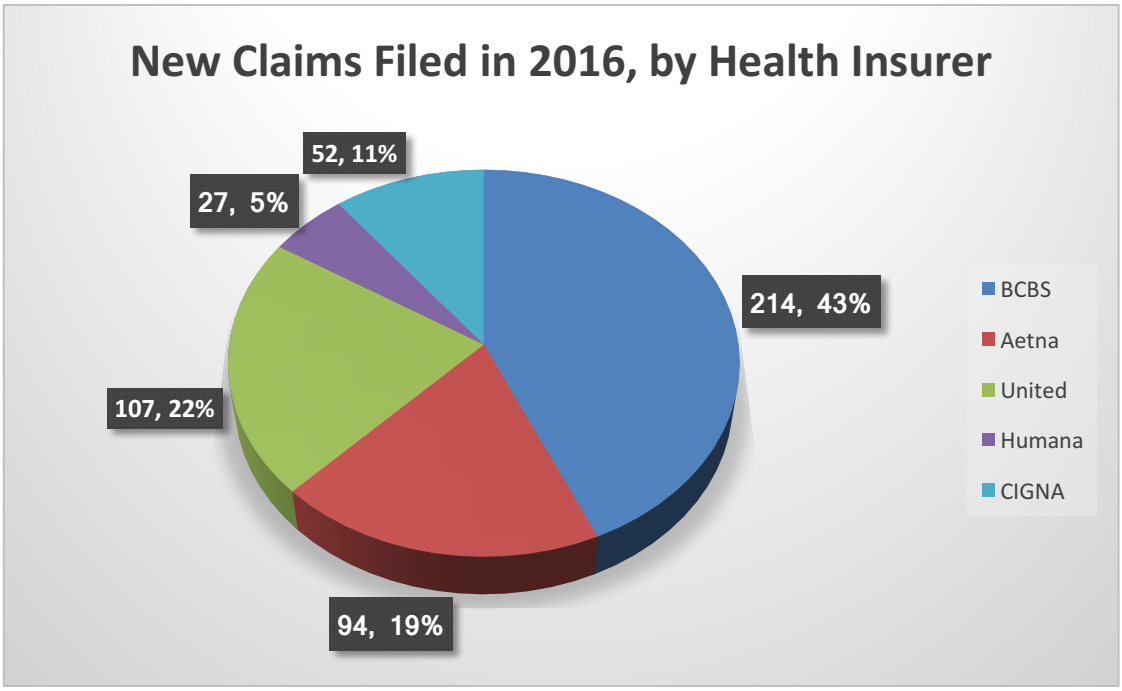
- 119 new claims filed the Fourth Quarter, 2016.
- The largest concentration of new claims was in the Third and Ninth Circuits, each with 21 new claims, followed by the Sixth Circuit with 14 new claims.
- BCBS (all plans) received the largest number of new claims (52), followed by United with 27 new claims.
- Member claims were the largest type of claims (58), followed by Facility claims (23), then Physician claims (17).

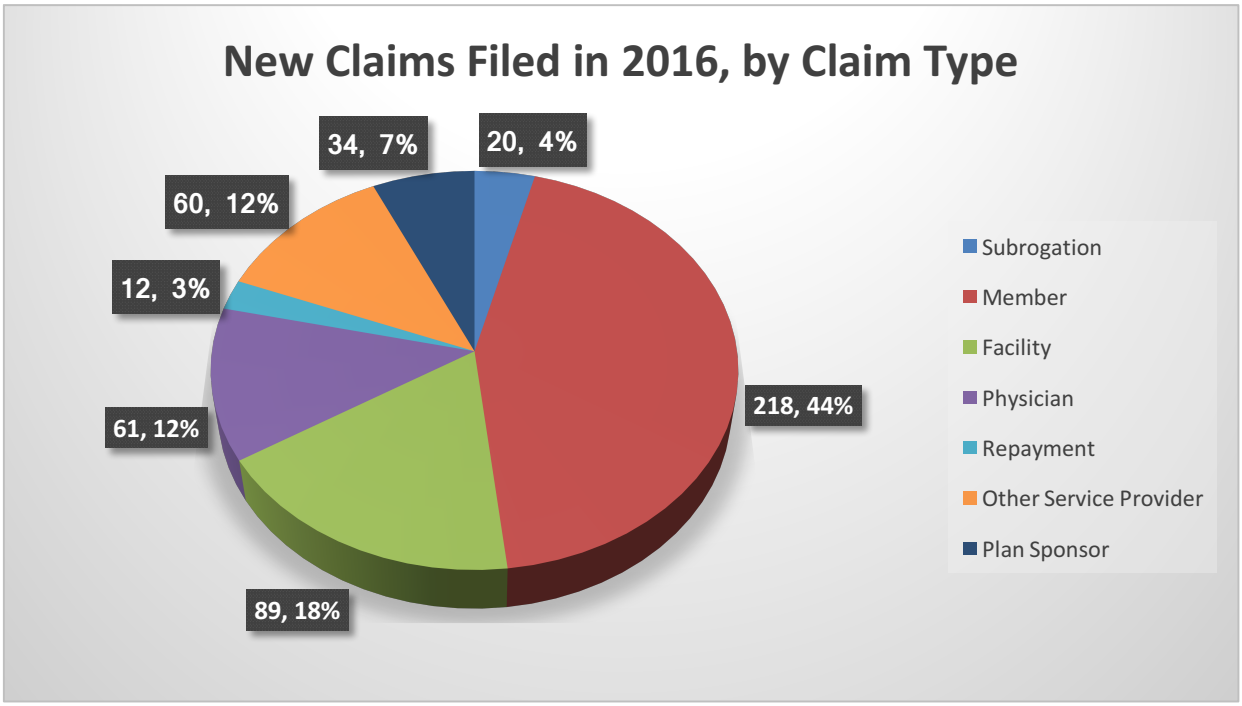
Compared to Fourth Quarter, 2015:

- 136 new claims filed the Fourth Quarter, 2015.
- The largest concentration of new claims (39) was in the Sixth Circuit, followed by the Fifth Circuit with 21 new claims.
- BCBS (all plans) received the largest number of new claims (75), followed by Aetna with 26 new claims.
- Member claims were the largest type of claims (47), followed by Plan Sponsor claims (29), then Facility claims (25).

Cumulative 2016 Statistics







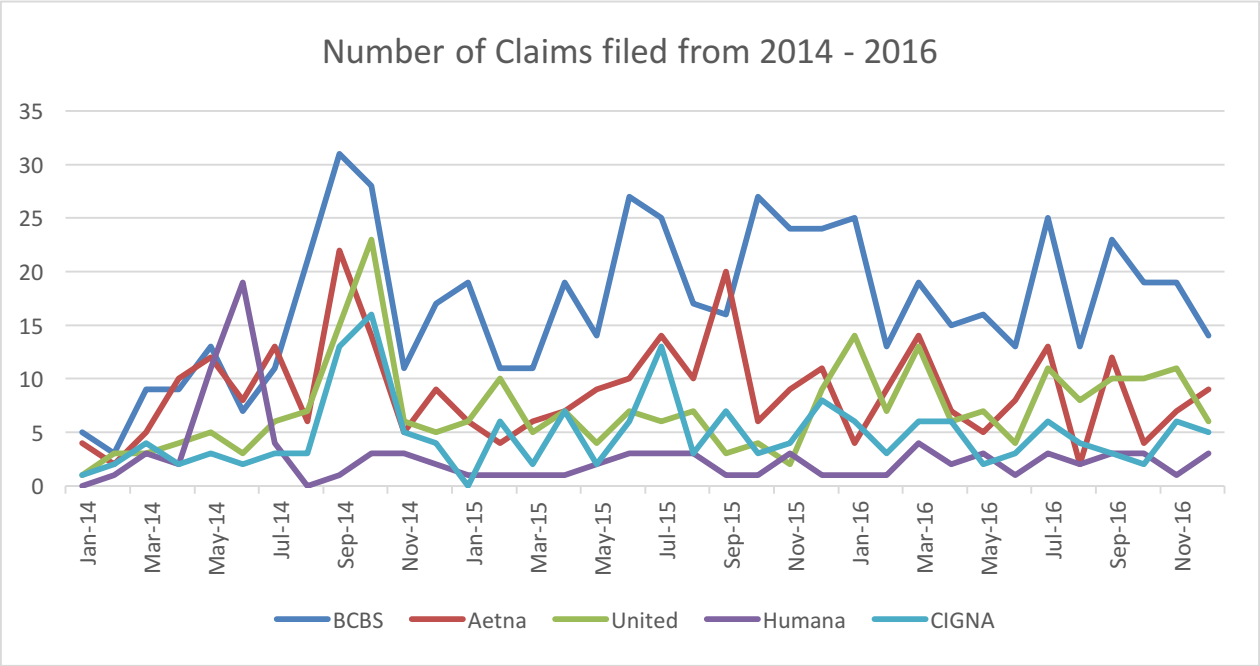
SUMMARY:

- 494 new claims filed in 2016.
- The largest concentration of new claims (108) was in the Ninth Circuit, followed by the Sixth Circuit with 58 new claims, then the Fifth Circuit with 57 new claims.
- BCBS (all plans) received the largest number of new claims (214), followed by United with 107 new claims.
- Member claims were the largest type of claims (218), followed by Facility claims (89).

Compared to 2015:

- 498 new claims filed in 2015.
- The largest concentration of new claims (113) was in the Sixth Circuit, followed by the Ninth Circuit with 84 new claims.
- BCBS (all plans) received the largest number of new claims (234), followed by Aetna with 112 new claims.
- Member claims were the largest type of claims (200), followed by Facility claims (114).

Three-year trending of case filings



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Mr. Herman is on the Roster of Arbitrators for the American Arbitration Association (Healthcare, Commercial) and a Neutral for the American Health Lawyers Association.