

FILED DATE: 10/9/2018 12:10 PM 2018L010842

IN THE CIRCUIT COURT OF COOK COUNTY
ILLINOIS – LAW DIVISION, COMMERCIAL CALENDAR

FILED
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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L010842

KATHLEEN HARPER, as a Taxpayer of the)	
City of Chicago, an Illinois Municipal)	
Corporation and suing derivatively on behalf of)	
the City of Chicago, an Illinois Municipal)	
Corporation,)	Case No: 2018 L 010842
)	
Plaintiff,)	JURY DEMANDED
)	
v.)	
)	
HEALTH CARE SERVICE CORPORATION)	
an Illinois Corporation,)	
)	
Defendant.)	

**AMENDED VERIFIED COMPLAINT FOR RELIEF FROM FRAUD,
SEEKING COMPENSATORY AND EXEMPLARY DAMAGES, AN
ACCOUNTING, AND FOR OTHER RELIEF.**

NOW COMES Plaintiff, Kathleen Harper, as a Taxpayer of the City of Chicago, Illinois an Illinois Municipal Corporation (“Chicago” or “the City”), suing derivatively as a taxpayer of the City of Chicago and on behalf of all similarly situated taxpayers of and on behalf of the City of Chicago, Illinois an Illinois Municipal Corporation and complaining against HEALTH CARE SERVICE CORPORATION, an Illinois Corporation, through her counsel NOVOSELSKY LAW OFFICES, P.C., states as follows:

PARTIES

1. Plaintiff, Kathleen Harper (“Harper” or “Plaintiff”) is a resident of the city of Chicago, Illinois and pays taxes as such. Plaintiff’s taxes are used to support health care costs incurred and paid by Chicago for its employees.

2. As a taxpayer residing in Chicago, Plaintiff has and asserts the right to bring this lawsuit as a taxpayers’ derivative action and as a representative of all other taxpayers similarly situated throughout Chicago as a to recover monies improperly taken from Chicago by Defendant

and to seek the other relief requested herein.

3. Defendant, HEALTH CARE SERVICES CORPORATION d/b/a BLUE CROSS/BLUE SHIELD OF ILLINOIS (“HCSC”) is an Illinois mutual insurance company licensed by the State of Illinois to provide health care insurance and to act as a Third-Party Administrator for health care benefit plans for Illinois employers and consumers. As such it is subject to the constraints and obligations imposed on it by the law of the State of Illinois.

4. The City of Chicago, Illinois is an Illinois Municipal Corporation that has a number of self-insured health care for its employees. These self-insured health care benefit plans for the City’s employees (“the Plan” or “the Plans”) are funded by money taken from the tax revenue provided to the City by taxpayers such as Plaintiff.

FACTS AND ALLEGATIONS COMMON TO ALL COUNTS

5. HCSC is and for some time has been the Third-Party Administrator of the City of Chicago’s employee health care plan/plans. Said plans are self-funded with the payments to HCSC for its services as the Third-Party Administrator of the City of Chicago’s employee health care plan/plans for services provided to employees coming exclusively from the municipal funds of the City of Chicago.

6. By virtue of HCSC’s corporate structure set out in its Articles of Incorporation and as provided for in the contracts (Administrative Service Agreements or an “ASA”) as well as a Voting Proxy and other documents issued to the City by HCSC when it was retained to act as the administrator of the City’s health care plan/plans, the City is one of the owners of HCSC.

7. As an owner of HCSC, HCSC owes the City and derivatively to its taxpayers an obligation of good faith and fair dealing in its transactions and conduct in regard to the manner in which it carries out its agreements with the City.

8. Some, but not all, of the required details and terms of the agreements between

HCSC and the City that allow HCSC to administer these plans are available through published documents or booklets describing the Plans provided to City employees as drafted by HCSC. Examples of those documents/booklet are incorporated by reference herein as Exhibit A, taken from sources available to the public on the Internet.

9. The Services HCSC provides City employees are in relevant part identical in form and content to other numerous other Plans HCSC sells to local government entities throughout the State of Illinois that may also be found in the public record at various places including the files and dockets of the Courts of the State of Illinois.

10. The Plans described in the paragraphs above provide that HCSC will be reimbursed by the City and other governmental entities public funds on behalf of those entities for payments HCSC makes to one or more health care providers who rendered medical care to a government employee provided health care coverage by his or her employer or on behalf of that employee's family.

11. The Plans HCSC enters into with these local governmental entities including the City include reference to "providers" that have an existing contractual relationship with HCSC and then bases calculation of payments made to those providers pursuant to those relationships between the providers and HCSC. This fact is reported by HCSC in its contractual documents as "separate financial" agreements with providers.

12. HCSC does not disclose to the governmental entities or to the public that bears the ultimate burden of payments made by those entities the terms of these separate contracts with its providers, asserting before the Courts of Illinois that these contracts are private, privileged from disclosure or otherwise will not be made available for review by these local government entities or their taxpayers.

13. The general terms of those plans as well as the claim by HCSC that its provider

contracts are not to be disclosed may be found in one or more public documents as filed in other causes of action filed in Illinois and are incorporated herein by reference and by virtue of judicial notice.¹ In those pleadings HCSC admits that the amount HCSC bills and receives from the governmental entities ostensibly as reimbursement for payments it has made to providers on behalf of these self-insured governmental entities is substantially less than it actually pays these providers.

14. HCSC admits in its pleadings filed in other cases in Illinois that the differential between the amount it takes from these governmental entities as reimbursement and the lesser amount it actually pays these providers is part of its “business model” that it has adopted to maximize the profits from administering these plans.

15. The contract the City entered into with HCSC provides that the City of Chicago will pay a specified fee to HCSC to act as the Third-Party Administrator of the Plan. The contract with the requires HCSC to review, approve and then pay healthcare Providers for the charges the Providers bill for their services to the employees covered by the Plan. The payment for these Provider services is made by HCSC but is made exclusively from City funds.

16. There is no provision in the City/HCSC contract for separate or additional payments to HCSC in any or in an unspecified/non-audited or disclosed in advance amount for its services as described in the preceding paragraph nor could there properly be such provision under Illinois funds. To the extent HCSC or the City assert that there has been a disclosure of these additional or non-audited payments, such provision and any payments made pursuant to said provision is

¹ As required by 735 ILCS section 5/2-606 Plaintiff’s counsel requested a copy of the particular Plan from HCSC and while it was identified by an agent of HCSC to plaintiff’s counsel as the same or having similar terms as the other Plans identified in this paragraph, HCSC declined to make a copy of that Plan available to Plaintiff as supposedly not subject by HCSC to disclosure expect to a party covered by the Plan. Accordingly, the verification necessary under 735 ILCS section 5/2-606 is attached as Exhibit B to this Complaint.

void and subject to revision by this Court as in violation of the laws and public policy of the State of Illinois.

17. HCSC takes compensation for its services as the Third-Party Administrator under its contractual agreements with the City in an amount that is not disclosed in amount or in detail to the citizens of Chicago or to other members of the public. The amount HCSC takes for its services is also not limited to any amount on the face of its contract or available for the public in any manner whatsoever.

18. Pursuant to the laws of the State of Illinois including but not limited to the Local Records Act as well as Article VIII, Section 1 of its Constitution, these contracts are therefore inherently illegal, unauthorized, and void. The governmental entities that entered into those agreements did so in violation of Illinois law.

19. As taxpayers of this State and the City of Chicago, Plaintiff and all others similarly situated have standing to bring suit to have these agreements deemed to be null and void by this Court as well as to recover the funds taken from taxpayers as a result of the decision of the governmental entities to enter into such illegal and unauthorized contractual agreements. Plaintiff has the right to also seek and recover other compensatory and exemplary relief to address the damages caused to the public fisc by the conduct of HCSC as described in this Complaint.

20. HCSC sells health care plans and/or administers various health care plans for municipalities located in the State of Illinois that provide health care benefits for these municipal employees and their families.

21. Defendant prepared and caused to be issued to the employees of the City a partial description of the benefits and payment procedures under its contract with the City to administer the City's self-funded employee health care plan, attached to this Complaint as Exhibit A.

22. In Exhibit A Defendant HCSC acknowledges that it has separate financial

arrangements with various medical Providers but does not 'share' in whole or in part those with the City or its employees. The amount and the description/limitation of these discounts or benefits is not publicly disclosed.

23. HCSC was retained by the City solely for the purpose of evaluating and paying *Provider* bills with public funds rather than to allow HCSC to pay itself an undisclosed additional amount for its own 'charges' for services HCSC did not provide a record of or limit in any manner.

DEMAND TO FILE SUIT

24. Demand was made on the City to initiate an action to set aside the agreement at issue in this Complaint and seek to recover the damages caused by HCSC in February of 2018. The City has declined to respond to that demand.

25. Even if a response had been received by Plaintiff through her counsel, demand on the City is not required as it would be futile given the fact that the City has been aware of the impropriety of this agreement since at least 1985 and has chosen to maintain this or similar forms of this agreement with HCSC despite that knowledge.

26. Demand would also be futile since HCSC has and will be expected to defend its conduct in this case by claiming, as it has done in other cases of this nature, that the City is itself responsible for any loss sustained by its citizens by virtue of its supposed 'knowing' execution of this agreement.

27. Demand would also be futile since HCSC has and will be expected to defend its conduct in this case by claiming that the City is complicit in this illegal agreement as the limited disclosure of the relationship between HCSC and the City reflects that the City is supposedly aware of the nature and extent of the discounts/benefits HCSC receives from its providers and shares an unstated and undisclosed amount of those discounts/benefits with the City. The fact that the City has agreed to do so is illegal based on earlier precedent that bars the City from entering into any

agreement that does not fully disclose the amount and details of compensation it pays a private vendor for its services.

**COUNT I
DERIVATIVE CLAIM FOR FRAUD.**

28. Plaintiffs readopt and reallege Paragraphs 1 through 27 above as Paragraph 28 of this Count I as though fully set forth herein.

29. The contractual agreements between HCSC and the City of Chicago are void as a matter of law and are thereby fraudulent as they allow HCSC to receive public funds in an amount that is not limited or disclosed to the public and therefore is fraudulent as in violation of the provisions of Illinois law including but not limited to Article VIII, Section 1 of the Constitution of the State of Illinois.

30. HCSC's conduct as set out above is also fraudulent under the Common Law of Illinois as they contain one or more knowingly false representations.

31. The representations made by HCSC to the City in the billings sent to the City through which HCSC received ostensible reimbursements for payments HCSC claims it made to providers on behalf of the City were in an amount HCSC intended to be accepted by the City as being true and accurate.

32. These representations were not true or accurate. They were in an inflated amount and rather than reflecting the actual amount HCSC paid its providers.

33. At the time HCSC made these representations to the City HCSC knew that the City and would accept these misrepresentations as true and would rely upon those representations to make payment to HCSC in the inflated amounts contained in the billings.

34. The City relied on the accuracy and truth of these representations to its detriment and paid the inflated rather than the true amount HCSC was entitled to receive for its services.

35. The misrepresentations described above as well as this scheme itself, one that HCSC has admitted in public is its “business model” and allowing it to profit from this scheme constitutes fraud under the Common Law of the State of Illinois.

36. The conduct of HCSC described in the preceding paragraphs was carried out by HCSC despite its actual knowledge of the illegality and impropriety of this scheme based on prior causes of action filed against it by the taxpayers of Chicago in 1985. This conduct was therefore carried out with malicious intent to obtain these public funds contrary to the constraints of the statutory and Common Law of the State of Illinois.

WHEREFORE, Plaintiff, KATHLEEN HARPER, as a resident and taxpayer of Chicago, Illinois suing derivatively and on behalf of all other taxpayers of Chicago and on behalf of the City of Chicago itself respectfully requests this Honorable Court enter judgment in favor of Plaintiff and others similarly situated and against Defendant, HEALTH CARE SERVICES CORPORATION d/b/a BLUE CROSS/BLUE SHIELD OF ILLINOIS, in an amount of compensatory damages as necessary to compensate Plaintiff, all other taxpayers of Chicago and on behalf of the City of Chicago itself for the loss caused by the conduct of HCSC and to award exemplary damages against this Defendant for the willful conduct described above to punish and deter HCSC and others similarly situated from like conduct

COUNT II.

DERIVATIVE ACTION FOR ACCOUNTING UNDER ILLINOIS LAW

37. Plaintiffs readopt and reallege Paragraphs 1 through 36 above as Paragraph 38 of this Count II as though fully set forth herein.

38. Defendants HCSC has acknowledged that it has obtained and continues to obtain additional payments from charges it had and paid and continues to pay from the public funds taken from the City and from other governmental entities who have self-insured plans administered by

HCSC. None of those payments have been disclosed to said entities or their citizens in any manner nor in any specified amount. Said payment of public funds without providing a record or accurate accounting violates various provisions of the Illinois Constitution and the Common Law of Illinois.

39. Since Defendant has acknowledged this ongoing and prior conduct, in order to protect the public funds of the citizens and taxpayers of the local government entities who have a self-insured Plan administered by HCSC and which have not had the disclosure of the amount and other details of these additional payment as required by Illinois law, this Court should order HCSC to provide to Plaintiff a full and complete accounting of said payments and receipts for the last ten years and continuing through the present. Said accounting should continue on a monthly basis until this Court has had the opportunity to consider the request for injunctive relief requested *infra*.

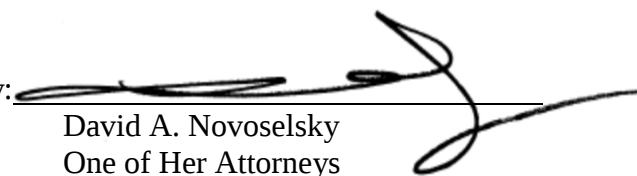
WHEREFORE, Plaintiff respectfully asks that this Honorable Court enter an order requiring Defendant, HEALTH CARE SERVICE CORPORATION, to provide Plaintiff with a full and complete accounting of said payments and receipts for the last ten years of any and all additional payments, 'discounts' or other sums HCSC has kept "for its own benefit" taken from the public funds taken by HCSC from one or more of the local government entities who have hired it to administer their self-insured health care plans. Said accounting should continue and through the present and updated and supplemented on a monthly basis pending further order of this Court.

Dated: October 9, 2018

Respectfully submitted,

DAVID A. NOVOSELSKY (2069881)
NOVOSELSKY LAW OFFICES, P.C.
25 North County Street, First Floor
Waukegan, IL 60085
(847) 782-5800
dnovo@novoselsky.com
service@novoselsky.com

KATHLEEN HARPER , Individually and
As A Taxpayer of the City of Chicago,
Plaintiff

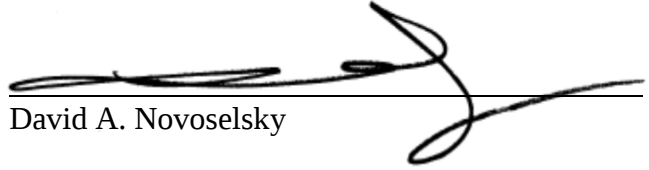
By: 
David A. Novoselsky
One of Her Attorneys

VERIFICATION BY CERTIFICATION

Under the penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109) the undersigned certifies that the statements set forth in this motion are true and correct, except as to matters therein stated to be on the information and belief, and, as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: October 9, 2018

David A. Novoselsky

A handwritten signature in black ink, appearing to read 'David A. Novoselsky', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke.

The following illustrates how rates are established for veteran crossing guards Actively at Work and hired before January 1, 2006.

**Healthcare Contribution Rates for Veteran Crossing Guards
(hired prior to January 1, 2006)***

Annual Salary	Level of Coverage		
	Single	Employee + 1	Family
Up to \$30,000 (flat rate)	\$20.95	\$31.84	\$36.87
\$30,001 to \$89,999	1.2921% of gross divided by 18	1.9854% of gross divided by 18	2.4765% of gross divided by 18

** Covered Employees and their covered Spouse, Domestic Partner, or Civil Union Spouse who choose not to participate in the Chicago Lives Healthy Wellness Program will incur an additional \$50 per non-participant increase in their monthly employee contribution. In other words, if an employee and covered Spouse/Domestic Partner/Civil Union Spouse each choose not to participate, the increase in the monthly employee contribution will be \$100 (\$50 per non-participant).*

Claim Administrator's Separate Financial Arrangements with Providers

The Claims Administrator has contracts with certain Providers ("Plan Providers"), including PPO Providers, in Illinois and other states to provide and pay for health care services to all persons entitled to health care benefits under individual certificates and group contracts to which the Claims Administrator is a party, including all persons covered under this Plan. Pursuant to its contracts with Plan Providers, under certain circumstances described therein, the Claims Administrator may receive substantial payments from Plan Providers with respect to services rendered to all such persons for which the Claims Administrator was obligated to pay the Plan Provider, or the Claims Administrator may pay Plan Providers less than their charges for services, by discount or otherwise, or may receive from Plan Providers other allowances under the Claims Administrator's contracts with them. In negotiating the terms of its service agreement with the Claims Administrator, the Plan Sponsor has taken into consideration that the Claims Administrator may receive such payments, discounts and/or other allowances during the term of such agreement. All required Deductible, Co-insurance, and Copayment amounts under this Plan shall be calculated on the basis of the Provider's charges for services rendered to a Participant, reduced by either the applicable discount or the Average Discount Percentage (ADP) as determined by the Claims Administrator. Depending on whether the ADP is greater or less than the actual discount, the Plan Sponsor may pay that differential or may retain it. A portion of these discounts or allowances may be retained by the Plan Sponsor to help offset its costs for the medical plans, including administrative fees or charges.

In the case of Physicians and certain other professional providers, the calculation of all benefits shall be based on the Schedule of Maximum Allowances for these Providers.

Example:

1. Assume you go into the Hospital for one night and the normal, full amount the Hospital bills for Covered Services is \$1,000. How is the \$1,000 bill paid?
2. You personally will have to pay the Deductible and Coinsurance amounts set forth in this Plan's Schedule of Benefits. Both the Deductible and Coinsurance amounts are based on the Hospital's charges net of any applicable discounts. Assuming a discount of \$300, this amount would be \$700.
3. Assuming you have already satisfied your Deductible, you will still have to pay the Coinsurance portion of the \$700 (the Hospital bill with the discount). For example, if your Coinsurance obligation is 10% (as it may be for certain services provided by a PPO Provider in the Tier 1 Blue Choice Options network), you personally will have to pay 10% of \$700, or \$70.
4. After taking into account the Deductible and Coinsurance amounts, the Claims Administrator will satisfy its portion of the Hospital bill. In most cases, the Claims Administrator has a contract with Hospitals that allows it to pay less, and requires the Hospital to accept less, than the amount of money the Claims Administrator would be required to pay if it did not have a contract with the Hospital.

Since the Hospital bill is \$700 after the discount, your Deductible has already been satisfied, and your Coinsurance is \$70, then the Claims Administrator has to satisfy the rest of the discounted Hospital bill, \$630. However, assuming the Claims Administrator has a contract with the Hospital, the Claims Administrator may be able to satisfy the \$630 bill that remains after your Coinsurance and Deductible, by paying less than \$630 to the Hospital or the Claim Administrator may have to pay more. The Claims Administrator receives, and keeps for its own account, any difference between the amount (based on ADP) paid by the Plan (after your co-pays and Deductible) and whatever the Claims Administrator ultimately pays under its contracts with Administrator Providers, and you are not entitled to any part of these savings.

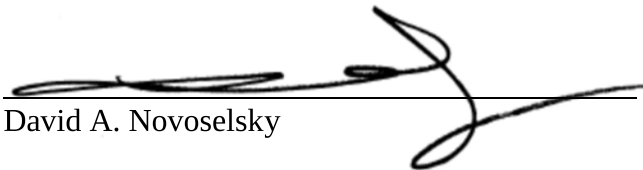
Here is an illustration of the example:

<i>One day admission</i>	<i>\$1,000</i>
<i>Average discount applied</i>	<i>\$300</i>
<i>Net covered charges</i>	<i>\$700</i>
<i>Deductible (met on previous claim)</i>	<i>-\$0</i>
<i>Amount subject to Coinsurance</i>	<i>\$700</i>
<i>Coinsurance percentage</i>	<i>x 10%</i>
<i>Coinsurance amount</i>	<i>\$70</i>

VERIFICATION

Pursuant to 735 ILCS section 5/2-606 and acting as the agent of the plaintiff, I requested a copy of the documentation referred to in this complaint. I was advised by a representative of defendant that defendant declined to produce a copy.

David A. Novoselsky

A handwritten signature in black ink, appearing to read 'David A. Novoselsky', is written over a horizontal line. The signature is stylized and cursive.