

# KOEHLER FITZGERALD

## | REFERENCE-BASED PRICING NEWSLETTER |

### Koehler Fitzgerald

Koehler Fitzgerald LLC provides highly specialized legal services to TPAs, HCSMs and Plan Sponsors offering reference-based medical plans.

Central to those services are the defense of balance billing claims, from provider billing to jury trial, utilizing the firm's highly rated trial lawyers, nationally recognized experts and affiliated local counsel throughout the U.S.

Koehler Fitzgerald's multilingual services are supported by the use of proprietary and customized software to track and support group calendaring, task management, contact management, conflicts checking, integrated document assembly and customized weekly reports of the status of claims and activity.

**James F. Koehler**  
**Koehler Fitzgerald LLC**  
**1111 Superior Ave.**  
**Cleveland, Ohio 44114**  
**216.539.9370**

### Centene Class Action

On January 11, 2018, a class action complaint was filed in the U.S. District Court for the Eastern District of Washington (*Harvey, et al. v. Centene Corporation, et al.*, Case No. 2:18-cv-00012) against Centene Corporation and two of its wholly-owned subsidiaries. Through its Ambetter plans, Centene claims to insure 1.4 million consumers nationwide. The Ambetter policies provide health coverage through the ACA marketplace to individual customers who often qualify for government subsidies.

The complaint alleges, "Ambetter policyholders around the nation report strikingly similar experiences: After purchasing an Ambetter insurance plan, they learn that the provider network Centene represented was available to Ambetter policyholders was in material measure, if not largely, fictitious. Members have difficulty finding and in many cases cannot find - medical providers who will accept Ambetter insurance."

Allegedly, Centene misrepresents "the number, location, and existence" of providers resulting in out-of-network services and balance billing. "Defendants also fail to reimburse medical providers' legitimate claims, routinely citing 'insufficient diagnostic' evidence as the reason. As a result of Centene failing to pay providers for legitimate claims, a large number of medical providers reject Ambetter insurance,





## CMS Bundled Payment Model

On January 9, 2018, CMS announced the first advanced alternative payment model introduced by the Trump administration. It is voluntary. Bundled Payments for Care Improvement Advanced includes 29 clinical episodes in the inpatient setting and three clinical episodes in the outpatient setting. According to Becker's Hospital Review (January 10, 2018), "[u]nder the program, provider payments will be based on quality performance during a 90-day episode of care. A clinical episode will begin at the start of an inpatient admission to an acute care hospital, which CMS referred to as the "anchor stay," or at the beginning of an outpatient procedure, the "anchor procedure." The clinical episode will end 90 days after the end of the anchor stay or the anchor procedure. ... The first cohort of providers will start participation in the model Oct. 1, and the performance period will run through Dec. 31, 2023. Providers selected to participate in BPCI Advanced beginning Oct. 1 must be held accountable for at least one clinical episode and may not add or drop clinical episodes until Jan. 1, 2020. Providers have until March 12 to apply. CMS will provide a second application opportunity for BPCI Advanced in January 2020."

further reducing the provider network available to Ambetter's members."

The filing of the class action follows upon a December 12, 2017 order from the Washington Insurance Commissioner ordering Coordinated Care Corp., a Centene affiliate, to cease selling plans for 2018. Reportedly, Centene agreed to a \$500,000 fine and outside monitoring, and resumed sales within days. On December 15, 2017, Centene issued a press release stating in part, "We will continue to work closely with the [Office of the Commissioner], including continuing to make refinements and improvements to our network reporting processes. We are committed to address known issues in our network in select regions of the state, and we have taken actions to ensure our members have access to these services."

The complaint seeks to have certified a nationwide class of Ambetter insureds from January 11, 2012 forward and asserts claims under the ACA and state law (Washington and Texas). Plaintiffs demand monetary damages, injunctive, and declaratory relief.

Ambetter insurance is offered in 15 states, Arkansas, Arizona, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Mississippi, Missouri, New Hampshire, Nevada, Ohio, Texas, and Washington. Centene Corporation is based in St. Louis, MO and described itself in its latest Form 10-Q (October 24, 2017) as "a diversified, multi-national healthcare enterprise that provides services to government sponsored and commercial healthcare programs, focusing on under-insured and uninsured individuals." Centene is a Fortune 100 company (NYSE: CNC).



Koehler Fitzgerald publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of Koehler Fitzgerald. Distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship.