

# Patients Target Insurers in Suits Over Flawed Doctor Directories

## Deep Dive

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- Studies consistently show directories have high inaccuracy rates
- Plaintiffs are suing under a variety of state and federal laws

A string of recent lawsuits is spotlighting health insurance companies' inaccurate provider directories, making a new legal case for the industry to fix a longstanding problem.

The widespread issue of “ghost networks” is a barrier to patients seeking care—particularly mental health care—and can help shield insurers from penalties over insufficient networks. A 2023 New York state report found that success in scheduling mental health appointments ranged from 0% to just 35%.

Patients challenging inaccurate directories lack a clear route in court, though their attorneys have tried a range of state and federal claims from false advertising to breach of fiduciary duty and even racketeering. Federal laws like the Affordable Care Act and the No Surprises Act require insurers to maintain accurate directories, but lax enforcement and limited legal pathways have undercut compliance.

Insurers vary in how much effort they invest in keeping their directories up to date, said Jane Zhu, associate professor of medicine at Oregon Health & Science University, but they're “universally pretty bad.” While it's a joint effort between doctors and insurers, the lawsuits just target insurers.

“It's giving the signal across the market that insurers are responsible for this,” she said.

### Different Legal Paths

The ACA and other federal laws governing provider directories lack a private right of action, typically leaving plaintiffs to sue under the Employee Retirement Income Security Act's broader umbrella. ERISA grants patients the right to sue, but patients might have to show a clear violation of the plan terms.

“When the plan clearly states what happens if there's no network provider, then a participant should be able to enforce that under old-fashioned ERISA principles,” said Roberta Casper Watson, partner with The Wagner Law Group.

If the plan doesn't, “it's not clear what remedies will be available,” she added.

Two federal employees in October sued Anthem in the US District Court for the Southern District of New York over the plan's alleged lack of autism and ADHD clinicians. The plaintiffs' attorneys at Pollock Cohen LLP conducted a secret shopper survey of 100 mental health providers in Anthem's directory and were only able to schedule appointments with seven.

The class action is a bellwether for future cases. The firm is planning to bring additional lawsuits after calling for more plaintiffs in the state, garnering more than 100 responses against nine different insurance companies.

The Anthem case seeks to avoid preemption of New York law under ERISA, which largely doesn't apply to federal government plans.

Plaintiffs accuse Anthem of violating the No Surprises Act, which requires health plans verify their provider directories every 90 days and update them within two days of being notified of a change. Anthem also violated New York's law on provider directories, as well as state laws on deceptive practices and false advertising, the suit said.

Anthem's attorneys did not respond to a request for comment.

### **'Largely BS'**

Lobbying group America's Health Insurance Plans called for a public-private partnership to improve directories, saying it's harder to maintain accurate data when there's no single source available to verify it.

Steve Cohen, partner at Pollock Cohen LLP, said the firm has also attempted to recruit physicians to sue insurers under trademark law, arguing they are damaging doctors' brands by falsely advertising them as in-network.

"Everybody knows these directories are largely BS," Cohen said.

Andrew and Andrea Hecht filed a class action in the US District Court for the Northern District of Illinois in July 2024 over a dispute between Cigna Health and Life Insurance Company and an Illinois hospital about whether their family's care was covered under COBRA. Cigna and the hospital couldn't agree on whether the claims were in-network, leaving the Hechts with the bill.

They allege Cigna violated its fiduciary duty to resolve the dispute under ERISA, pay the full cost of the care, and resolve the discrepancy in its provider directory. A judge recently let much of the case proceed, disagreeing with Cigna's arguments that it's not liable under ERISA because it only administers the plan and is not its sponsor, and because it did not violate any plan terms.

Yet another suit in the US District Court for the District of Minnesota tests claims under the Racketeer Influenced and Corrupt Organizations Act and the Mental Health Parity and Addiction Equity Act.

A Mayo clinic employee alleged the health system and Medica Health Plan Solutions misled her about the availability of in-network mental health providers and violated RICO by keeping secret a payment methodology that ultimately stuck her with a higher bill for using an out-of-network doctor.

## State Laws

Enforcement against inaccurate directories primarily falls to states, but penalties against insurers are unusual.

Even after three years of fines by Louisiana regulators, error rates still exceeded 50%, according to a Yale Law and Policy Review paper. Many state laws are centered around complaints from consumers, who may not even know they can report the problem.

State laws might offer the best hope for plaintiffs, although they often have to meet a high bar in court if judges don't kick the cases to regulators first. At least 39 states have their own provider directory requirements for state-regulated plans, according to AHIP.

"Factually, some of the state laws seem to have stronger prohibitions, and a more clear path to a remedy for the participants," Casper Watson said.

San Diego attorneys in 2021 sued Kaiser Foundation Health Plan, Inc., alleging the insurer's directory had inaccuracy rates above 30%. The California Court of Appeal recently rejected Kaiser's argument that oversight resided with state regulators.

Ghost networks are more than just an inconvenience because they can ultimately bar patients from accessing treatment. Directories should be better in the age of sites like Yelp and Doximity, Zhu said.

"We haven't applied this sort of information to low-hanging fruit like provider directories yet," she said. "And that's sort of ridiculous to me because provider directories—network adequacy—is such a fundamental part of the patient navigation experience."

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