

112 F. Supp. 2d 445, *; 2000 U.S. Dist. LEXIS 13297, **

IVTX, INC., d/b/a EXPRESS SCRIPTS INFUSION SERVICES, Plaintiff vs. UNITED HEALTHCARE OF THE MID-ATLANTIC, INC., Defendant

Civil Action WMN-00-0055

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

112 F. Supp. 2d 445; 2000 U.S. Dist. LEXIS 13297

August 11, 2000, Decided
August 11, 2000, Filed

DISPOSITION: **[**1]** Defendant's Motion to Dismiss (Paper No. 6) GRANTED.

CASE SUMMARY


PROCEDURAL POSTURE: In an action for payment of **health** care services, plaintiff company sued defendant **health** maintenance organization after the company defendant had contracted with as an administrative services provided went bankrupt. Defendant moved for dismissal.

OVERVIEW: Plaintiff company sued defendant **health** maintenance organization (HMO) following defendant's alleged failure to pay plaintiff for **health** care costs. The company defendant had contracted with to administer **health** care services went bankrupt. Plaintiff sued under [Md. Code Ann., Health-Gen. II §§ 19-712\(b\)\(1\)\(ii\)](#), 19-712.1(b)(1), for the money owed. The court only addressed defendant's argument that plaintiff did not have a private right of action under the state statute. The court dismissed the action finding that plaintiff did not have a private right of action. The court was not convinced by plaintiff's argument that the sole purpose of the legislation was to protect external providers. The court saw that the statute could also serve to streamline claims against HMOs by providing a consolidated administrative structure. The statute provided for an administrative remedy, the decision from which the plaintiff was free to appeal. Since the statute provided a particular remedy, the court refused to read others into it. The court noted that administrative proceedings had already begun that could afford plaintiff the relief it was seeking.


OUTCOME: Motion for dismissal was granted. The court found that plaintiff did not have a private cause of action under state law and that the relief plaintiff sought was already being addressed administratively as provided for by state law.

CORE TERMS: provider, right of action, legislative history, cause of action, external, silence, subscribers, express statutory, sole purpose, subgroup, administrative service, services rendered, health care, memorandum, statutory construction, designed to protect, legislative intent, individual right, general benefit, medical service, final decision, little weight, absentmindedly, improbable, enforcing, elemental, forgot, confer, weighs, canon

[Healthcare Law](#) > [Managed Healthcare](#) > [Health Maintenance Organizations](#) 


HN1  [Md. Code Ann., Health-Gen. II § 19-712\(b\)\(1\)\(ii\)](#), provides that a **health** maintenance organization (HMO) that enters into an administrative service provider contract with a **health** care provider for the provision of **health** care services to HMO members, is also responsible for all claims for services rendered by a provider other than that provider with which the HMO entered into its administrative service contract. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Healthcare Law](#) > [Managed Healthcare](#) > [General Overview](#) 

HN2  Acts that constitute violations of [Md. Code Ann., Health-Gen. II § 19-712](#) and the remedies for such violations are set forth in [Md. Code Ann., Health-Gen. II § 19-729](#), which provides that the Maryland Insurance Commissioner is responsible for enforcing the provisions of the article. When a violation occurs, the commissioner is to take action against the violator. [Md. Code Ann., Health-Gen. II §§ 19-729](#), 19-730. [More Like This Headnote](#)


[Governments](#) > [Legislation](#) > [Interpretation](#) 

[Governments](#) > [Legislation](#) > [Statutory Remedies & Rights](#) 

HN3  A court's primary focus in determining whether there is an implied private right of action under a given statute is on the legislative intent. The factors commonly assessed in a determination of that legislative intent include: (1) the legislative history and purposes of the statute, (2) the identity of the class for whose particular benefit the statute was passed, and (3) the existence of express statutory remedies to serve the legislative purposes. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Civil Procedure](#) > [Federal & State Interrelationships](#) > [Federal Common Law](#) > [General Overview](#) 

[Governments](#) > [Legislation](#) > [Statutory Remedies & Rights](#) 


HN4  Where the plain language of a provision weighs against implication of a private remedy, silence within the legislative history as to a private cause of action reinforces the decision not to find such a right implicitly. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Governments](#) > [Legislation](#) > [Interpretation](#) 

[Governments](#) > [Legislation](#) > [Statutory Remedies & Rights](#) 


HN5  In determining whether a private right of action is to be implied, the Maryland Court of Appeals has distinguished between those statutes designed to confer a general benefit on the public at large and those designed to protect a particular subgroup of the public or to preserve or create individual rights. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Governments](#) > [Legislation](#) > [Statutory Remedies & Rights](#) 

HN6  Where a statute establishes an individual right, and fails to provide an express statutory remedy, a traditional common law action will ordinarily lie. [More Like This Headnote](#)

[Governments](#) > [Legislation](#) > [Interpretation](#) 

[Governments](#) > [Legislation](#) > [Statutory Remedies & Rights](#) 

HN7  It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. [More Like This Headnote](#)

COUNSEL: Earl F. Leitess, Leitess, Leitess & Friedberg, P.C., Baltimore City, Maryland, for Plaintiff.

Mark Solomon, Marcell Solomon & Associates, P.C., Greenbelt, Maryland, for Defendant.

Bryan D. Bolton, Funk & Bolton, P.A., Baltimore City, Maryland, for Defendant.

JUDGES: William M. Nickerson, United States District Judge.

OPINION BY: William M. Nickerson

OPINION: [*446]

MEMORANDUM

Before the Court is Defendant's Motion to Dismiss (Paper No. 6). The motion is ripe for decision. Upon a review of the motion and the applicable case law, the Court determines that no hearing is necessary (Local Rule 105.6) and that the motion will be granted.

I. BACKGROUND

This complaint arises out of the alleged failure of Defendant United Healthcare (United) to pay Plaintiff **IVTx**, Inc. d/b/a Express Scripts Infusion Services (**IVTx**) for **health** care services rendered to United subscribers under a contract between

IVTx and Doctor's Health, Inc. (DHI). In July 1996, United, a **health** maintenance organization (HMO) entered into an administrative service provider contract with DHI whereby DHI agreed to administer **health** care services to United **[**2]** subscribers. DHI, in turn, entered into a contract with **IVTx** whereby the latter provided infusion services to United's subscribers and submitted claims for payment of services to DHI.

After DHI filed bankruptcy, **IVTx** filed this action against United, pursuant to [Md. Code Ann., Health-Gen II §§ 19-712\(b\)\(1\)\(ii\)](#) and 19-712.1(b)(1), for the money owed. United has moved to dismiss, arguing: 1) Title 19, Subtitle 7 of the **Health** General Article does not create a private right of action; 2) assuming **IVTx** has a private right of action, it failed to exhaust all available administrative remedies prior to bringing the present action; and 3) the Court should abstain from deciding the action because an administrative proceeding involving the same subject matter is pending.

II. DISCUSSION

^{HN1} [Md. Code Ann., Health-Gen II § 19-712\(b\)\(1\)\(ii\)](#) provides that an HMO that enters into an administrative service provider contract with a **health** care provider **[*447]** for the provision of **health** care services to HMO members, is also responsible for all claims for services rendered by a provider other than that provider with which the HMO entered into its administrative service contract. See [Md. Code Ann., **\[**3\]** Health-Gen. II § 19-712\(b\)\(1\)\(ii\)](#). ^{HN2} Acts that constitute violations of § 00019-712 and the remedies for such violations are set forth in § 19-729, which provides that the Maryland Insurance Commissioner is responsible for enforcing the provisions of the Article. When a violation occurs, the Commissioner is to take action against the violator. See *id.* at §§ 19-729, 19-730 (listing various penalties that may be imposed by the Commissioner). United contends that the statute's silence as to a private cause of action, in combination with its express administrative remedy, precludes any private right of action under the statute. Defendant's Motion at 5-7.

^{HN3} The Court's primary focus in determining whether there is an implied private right of action under a given statute is on the legislative intent. The factors commonly assessed in a determination of that legislative intent include: 1) the legislative history and purposes of the statute, 2) the identity of the class for whose particular benefit the statute was passed, and 3) the existence of express statutory remedies to serve the legislative purposes. See [Sugarloaf Citizens Ass'n, Inc. v. Gudis, 78 Md. App. 550, 557, 554 A.2d 434 \(1989\) **\[**4\]**](#) (citing [Daily Income Fund, Inc. v. Fox, 464 U.S. 523, 536, 78 L. Ed. 2d 645, 104 S. Ct. 831 \(1984\)](#)), *aff'd* [319 Md. 558 \(1990\)](#). The Court will address each of these factors seriatim.

IVTx acknowledges that the legislative history is silent as to an intent to create a private cause of action under the statute. Plaintiff's Opp. at 3. **IVTx** further acknowledges that, under federal law, silence weighs against the finding of an intent of the legislature to create a private cause of action. See [Touche Ross & Co. v. Redington, 442 U.S. 560, 571, 61 L. Ed. 2d 82, 99 S. Ct. 2479 \(1979\)](#). In *Touche Ross*, the United States Supreme Court held that, "implying a private right of action on the basis of Congressional silence is a hazardous enterprise at best." *Id.* The Supreme Court further determined that ^{HN4} where the plain language of a provision weighs against implication of a private remedy, silence within the legislative history as to a private cause of action reinforces the decision not to find such a right implicitly. *Id.* **IVTx**, however, relying on the reasoning of the Maryland Court of

Special Appeals in Sugarloaf, argues that the **[**5]** silence of legislative history surrounding Title 19, Subtitle 7 should be given very little weight in determining whether there is an implied private cause of action under the statute, since legislative record keeping is much less extensive at the state level than the federal level.

In Sugarloaf, the plaintiffs sought to bring a private right of action under a county ethics code. Noting the "vast difference in legislative record-keeping between the Congress and a municipal or local government," the court stated its reluctance to place much weight on the silence of the legislative history. [78 Md. App. at 558.](#) Given a similar comparative sparsity of legislative history accompanying Maryland state legislation, the Court agrees that this first factor is entitled to little weight. Thus, the Court considers the remaining factors.

HNS In determining whether a private right of action is to be implied, the Maryland Court of Appeals has distinguished between those statutes designed to confer a general benefit on the public at large and those designed to protect a particular subgroup of the public or to preserve or create individual rights. See [Widgeon v. Eastern Shore Hosp. Ctr., 300 Md. 520, 536, 479 A.2d 921 \(1984\).](#) **[**6]** **IVTx** contends that the sole purpose of § 19-712(b)(1)(ii) is to ensure that external providers get paid for the goods or services provided to members of HMOs and, therefore, the statute falls into the latter category, being one that is designed to protect a particular **[*448]** subgroup of the public. Plaintiff's Opp. at 4-5. n1 **IVTx** further argues that an individual right of action flows directly from the purpose of the statute. Id.

----- Footnotes -----

n1 See [In re Doctors Health, Inc., 238 B.R. 594, 599 \(Bankr. D. Md. 1999\)](#), a case involving United and DHI, arising out of the bankruptcy of DHI. There, the United States Bankruptcy Court for the District of Maryland, looking to [Md. Code Ann., Health-Gen. II § 19-713.2\(c\)](#), found that the provision made clear that Maryland's focus in enacting the HMO Act was to increase the likelihood of external providers being paid for services rendered on behalf of contracting providers such as DHI.

----- End Footnotes-----

The Court first notes that it is not entirely convinced that the sole purpose of the **[**7]** statute in question is to protect external providers. The statute may also server to streamline claims against. HMOs by providing a consolidated administrative structure to deal with such disputes. The creation of the administrative structure may be designed to minimize the possible congestion of the courts with such claims. The statute, therefore, under this at least plausible analysis, would server to confer a general benefit on the public at large.

Even were the Court to assume, however, that **IVTx** is correct and that the sole purpose of the statute is to protect a particular subgroup of the public (external medical service providers), such an assumption does not lead necessarily to the conclusion that there is an implied right of private action created under the statute. The Maryland Court of Appeals held in [Widgeon](#), **"HNG"** where a statute establishes an individual right, . . . and fails to provide an express statutory remedy, a traditional

common law action will ordinarily lie." [300 Md. at 536](#) (emphasis added). In the present case, in contrast, there is an express statutory remedy available to protect the rights of the external medical service providers -- the administrative **[**8]** structure in which action is taken by the Commissioner against violations of the statute. Moreover, in the event an unfavorable final decision is given, the parties have the right to seek judicial review in Maryland state court. [Md. Code Ann., Health-Gen. II §§ 19-732](#), 19-733. **IVTx** fails to acknowledge this important qualification.

The factor, however, that lends the greatest support to the conclusion that there is no implied private right of action under the statute is the Maryland General Assembly's inclusion in the statute of an express provision charging the Commissioner to enforce the statute's terms. In [Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 62 L. Ed. 2d 146, 100 S. Ct. 242 \(1979\)](#), a decision relied upon heavily by the Maryland Court of Special Appeals in Sugarloaf, the plaintiff argued that an implied private cause of action existed under a particular statute that authorized an administrative body to take action against violations of its provisions. The Supreme Court held that, "in view of these express provisions for enforcing the duties imposed by [the statute at issue], it is highly improbable that 'Congress absentmindedly forgot **[**9]** to mention an intended private action.'" [444 U.S. at 20](#) (quoting [Cannon v. Univ. Of Chicago, 441 U.S. 677, 742, 60 L. Ed. 2d 560, 99 S. Ct. 1946 \(1979\)](#) (Powell, J. dissenting)). Moreover, the Court held ^{HN7} "it is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." [444 U.S. at 19](#).

The Court will follow this "elemental canon of statutory construction" in the present case. An express remedy that serves to ensure that the external providers receive payment for their services to HMO subscribers is provided under the statute. **IVTx's** rights, therefore, are adequately protected under the current administrative structure. Following the analysis of *Transamerica*, cited in *Sugarloaf*, the Court finds that it is highly improbable that the legislature "absentmindedly forgot to mention an intended private action" and the Court refrains from reading **[*449]** other remedies into the particular one expressly provided under §§ 19-729, 19-730 and 19-733.

Because the Court finds that there is no private right of action under the statute, it need not **[**10]** consider the merits of Defendant's exhaustion or abstention arguments. The Court notes, however, without ultimately deciding those issues, that the principles underlying the exhaustion requirement and the abstention doctrines fully support dismissal, particularly under the specific facts in this case.

Here, the Commissioner has already commenced proceedings that can afford Plaintiff precisely the relief that it is seeking in this action. The Commissioner has, in fact, already issued a preliminary order that would require Defendant to make payment to Plaintiff and other similarly situated parties. Although Plaintiff is not technically a party in those proceedings, should the Commissioner issue a final decision adverse to its interests, it will have the right to appeal that decision in the state court. To allow Plaintiff (as well as all of the other providers whose claims are encompassed in the Commissioner's order) to circumvent that process and initiate parallel proceedings in this or other courts would be a waste of judicial resources and would also give rise to the potential for conflicting results.

III. CONCLUSION

For these reasons, the Court concludes that Defendant's **[**11]** motion to dismiss should be granted. A separate order will issue.

William M. Nickerson

United States District Judge

Dated: August 11, 2000

ORDER

Pursuant to the foregoing memorandum, and for the reasons stated therein, IT IS this 11th day of August 2000, by the United States District Court for the District of Maryland, hereby ORDERED:

1. That Defendant's Motion to Dismiss (Paper No. 6) is hereby GRANTED;
2. That this action is hereby CLOSED;
3. That any and all prior rulings made by this Court disposing of any claims against any parties are incorporated by reference herein and this order shall be deemed to be a final judgment within the meaning of Fed. R. Civ. p. 58; and
4. That the Clerk of the Court shall mail or transmit copies of the foregoing memorandum and this order to all counsel of record.

William M. Nickerson

United States District Judge