

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brittany R. Tovar and Reid Olson,

Plaintiffs,

vs.

Essentia Health,
Innovis Health, LLC,
dba Essentia Health West,
HealthPartners, Inc., and
HealthPartners Administrators, Inc.

Defendants.

Case No.: 0:16-cv-00100-(DWF/LIB)

**ANSWER OF DEFENDANTS
ESSENTIA HEALTH AND
INNOVIS HEALTH, LLC TO
FIRST AMENDED COMPLAINT**

Defendants Essentia Health (“Essentia”) and Innovis Health, LLC, dba Essentia Health West (“Innovis”), for their Answer to the First Amended Complaint of Plaintiff Reid Olson (“Olson”), state and allege as follows:

1. All allegations of the First Amended Complaint are denied unless admitted, qualified, or explained in this Answer.

NATURE OF ACTION

2. Paragraph 1 of the First Amended Complaint contains Plaintiff’s characterization of the case and, therefore, no response is required. To the extent a response is required, Essentia and Innovis deny that it violated the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116.

3. Paragraph 2 contains legal conclusions, to which no response is required. To the extent a response is required, Essentia and Innovis deny any factual allegations in Paragraph 2.

4. Essentia and Innovis deny the allegations contained in Paragraph 3.

5. The allegations contained in Paragraph 4 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis deny the allegations in Paragraph 4.

PARTIES

6. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and, therefore, deny the allegations.

7. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and, therefore, deny the allegations.

8. With respect to Paragraph 7, Essentia and Innovis admit that Essentia is a non-profit corporation, headquartered in Duluth, Minnesota and doing business in Minnesota, North Dakota, Wisconsin, and Idaho.

9. With respect to Paragraph 8, Essentia and Innovis admit that Essentia is the corporate member of Innovis, a tax-exempt Delaware limited liability company currently doing business in Minnesota.

10. With respect to Paragraph 9, Essentia and Innovis admit only that Innovis participated in Medicare and Medicaid during all relevant times described in the First Amended Complaint. Essentia and Innovis deny the remaining allegations in Paragraph 9.

11. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and, therefore, deny the allegations.

12. With respect to Paragraph 11, Essentia and Innovis admit only that Essentia contracted with HealthPartners Administrators, Inc. to administer its self-insured health plan for the relevant time period described in the First Amended Complaint. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11 and, therefore, deny the allegations.

13. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and, therefore, deny the allegations.

JURISDICTION AND VENUE

14. Essentia and Innovis admit that jurisdiction of this Court has been invoked under Section 1557, 42 U.S.C. § 18116(a), as set forth in Paragraph 13.

15. Essentia and Innovis admit that jurisdiction of this Court has been invoked under 28 U.S.C. § 1331, as set forth in Paragraph 14.

16. With respect to Paragraph 15, Essentia and Innovis admit only that venue is proper under 28 U.S.C. § 1391. Essentia and Innovis deny the remaining allegations in Paragraph 15.

FACTUAL ALLEGATIONS

17. With respect to Paragraph 16, Essentia and Innovis admit only that Brittany R. Tovar (“Tovar”) was employed by Innovis as a nurse from 2010 to 2016. Essentia and Innovis deny the remaining allegations in Paragraph 16.

18. With respect to Paragraph 17, Essentia and Innovis admit only that Tovar was enrolled in a self-insured health plan in 2015 offered to eligible employees of Innovis, which was sponsored by Essentia (“the Plan”).

19. With respect to Paragraph 18, Essentia and Innovis admit only that Tovar’s dependent, Olson, was a beneficiary of the Plan.

20. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and, therefore, deny the allegations.

21. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and, therefore, deny the allegations.

22. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and, therefore, deny the allegations.

23. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and, therefore, deny the allegations.

24. With respect to Paragraph 23, Essentia and Innovis admit that, upon information and belief, Olson identifies as transgender and that he sought coverage in 2015 under the Plan.

25. With respect to Paragraph 24, Essentia and Innovis admit that the Plan was self-insured by Essentia.

26. With respect to Paragraph 25, Essentia and Innovis admit that Essentia contracted with HealthPartners Administrators, Inc. to be a third-party administrator for the Plan.

27. With respect to Paragraph 26, Essentia and Innovis admit that HealthPartners provided Essentia an option for coverage.

28. The allegations contained in Paragraph 27 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and, therefore, deny the allegations.

29. With respect to Paragraph 28, Essentia and Innovis admit that HealthPartners presented Essentia with an option for coverage in 2015 and that the plan option already contained a list of exceptions and exclusions.

30. With respect to Paragraph 29, Essentia and Innovis admit only that Essentia considered deductibles and coinsurance percentages for plan features when presented an option for coverage by HealthPartners. Essentia and Innovis further admit that HealthPartners did not discuss specific exclusions with Essentia.

31. With respect to Paragraph 30, Essentia and Innovis admit that all plans presented by HealthPartners to Essentia in 2014 and 2015 contained an exclusion for “[s]ervices and/or surgery for gender reassignment.”

32. The allegations contained in Paragraph 31 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and, therefore, deny the allegations.

33. The allegations contained in Paragraph 32 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 and, therefore, deny the allegations.

34. With respect to Paragraph 33, Essentia and Innovis admit that Essentia chose a plan option provided by HealthPartners in 2015 and the plan included an exclusion for “[s]ervices and/or surgery for gender reassignment.”

35. With respect to Paragraph 34, Essentia and Innovis admit only that Plan in 2015 included an exclusion for “[s]ervices and/or surgery for gender reassignment.” Essentia and Innovis deny the remaining allegations in Paragraph 34.

36. With respect to Paragraph 35, Essentia and Innovis admit that Tovar wrote a letter addressed “To Whom It May Concern” regarding insurance coverage concerns for Olson dated March 24, 2015. Essentia and Innovis allege the March 24, 2015 letter speaks for itself. Essentia and Innovis deny any remaining allegations in Paragraph 35.

37. With respect to Paragraph 36, Essentia and Innovis admit that Tovar wrote a letter addressed “To Whom It May Concern” regarding insurance coverage concerns for Olson dated March 24, 2015. Essentia and Innovis allege Exhibit A speaks for itself. Essentia and Innovis deny any remaining allegations in Paragraph 36.

38. With respect to Paragraph 37, Essentia and Innovis admit that, upon information and belief, HealthPartners sent a letter to Tovar dated April 9, 2015. Essentia and Innovis allege the April 9, 2015 letter speaks for itself.

39. With respect to Paragraph 38, Essentia and Innovis admit that Tovar wrote a letter addressed “To Whom It May Concern” dated May 9, 2015. Essentia and Innovis allege the May 9, 2015 letter speaks for itself. Essentia and Innovis deny any remaining allegations in Paragraph 38.

40. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and, therefore, deny the allegations.

41. With respect to Paragraph 40, Essentia and Innovis admit only that Kim Carlin inquired via email if HealthPartners was able to delay its communication to Tovar until a meeting held on June 2, 2015. Essentia and Innovis allege the email speaks for itself. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40 and, therefore, deny the allegations.

42. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and, therefore, deny the allegations.

43. With respect to Paragraph 42, Essentia and Innovis admit that Tovar was reimbursed for certain medical expenses related to Olson. Essentia and Innovis deny the remaining allegations in Paragraph 42.

44. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 and, therefore, deny the allegations.

45. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and, therefore, deny the allegations.

46. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and, therefore, deny the allegations.

47. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and, therefore, deny the allegations.

48. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and, therefore, deny the allegations.

49. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 and, therefore, deny the allegations.

50. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 and, therefore, deny the allegations.

51. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and, therefore, deny the allegations.

52. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and, therefore, deny the allegations.

53. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 and, therefore, deny the allegations.

54. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 and, therefore, deny the allegations.

55. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and, therefore, deny the allegations.

56. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 and, therefore, deny the allegations.

57. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and, therefore, deny the allegations.

58. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and, therefore, deny the allegations.

59. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and, therefore, deny the allegations.

60. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and, therefore, deny the allegations.

61. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and, therefore, deny the allegations.

62. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 and, therefore, deny the allegations.

63. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 and, therefore, deny the allegations.

64. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 and, therefore, deny the allegations.

65. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 and, therefore, deny the allegations.

66. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 and, therefore, deny the allegations.

67. With respect to Paragraph 66, Essentia and Innovis admit that Tovar was reimbursed for certain medical expenses related to Olson. Essentia and Innovis deny the remaining allegations in Paragraph 66.

68. With respect to Paragraph 67, Essentia and Innovis admit that Tovar was reimbursed for certain medical expenses related to Olson. Essentia and Innovis further admit the exclusion for “[s]ervices and/or surgery for gender reassignment” remained in the Plan through the end of 2015. Essentia and Innovis affirmatively allege the exclusion was removed effective January 1, 2016.

69. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 and, therefore, deny the allegations.

70. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and, therefore, deny the allegations.

71. Essentia and Innovis deny the allegations in Paragraph 70.

72. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 and, therefore, deny the allegations.

73. Essentia and Innovis are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72 and, therefore, deny the allegations.

74. With respect to Paragraph 73, Essentia and Innovis admit the exclusion for “[s]ervices and/or surgery for gender reassignment” was removed from the Plan effective January 1, 2016. Essentia and Innovis further admit Tovar and Olson maintained coverage through Essentia’s health plan until October 31, 2016.

COUNT I
VIOLATION OF THE AFFORDABLE CARE ACT, § 1557
42 U.S.C. § 18116

75. With respect to the allegations in Paragraph 74, Essentia and Innovis incorporate their responses to Paragraphs 1-73, as through specifically set forth herein.

76. The allegations contained in Paragraph 75 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis deny the allegations in Paragraph 75.

77. The allegations contained in Paragraph 76 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis deny the allegations in Paragraph 76.

78. The allegations contained in Paragraph 77 do not relate to Essentia and/or Innovis and, therefore, no response is required. To the extent a response is required, Essentia and Innovis deny the allegations in Paragraph 77.

COUNT II
VIOLATION OF THE AFFORDABLE CARE ACT, § 1557
42 U.S.C. § 18116

79. With respect to the allegations in Paragraph 78, Essentia and Innovis incorporate their responses to Paragraphs 1-77, as through specifically set forth herein.

80. Essentia and Innovis deny the allegations in Paragraph 79.

81. Essentia and Innovis deny the allegations in Paragraph 80.

82. Essentia and Innovis deny the allegations in Paragraph 81.

JURY DEMAND

83. Essentia and Innovis admit Olson demands a jury trial on all claims for which a jury trial is available, as set forth in Paragraph 82. Essentia and Innovis also demand trial by jury by the greatest number allowed by law.

RELIEF REQUESTED

84. Essentia and Innovis deny Olson's request for relief and deny that Olson is entitled to judgment in his favor or to any relief whatsoever.

AFFIRMATIVE DEFENSES

85. The First Amended Complaint fails to state a claim upon which relief can be granted.

86. Olson failed to mitigate his damages, if any exist.

87. To the extent any damages exist, Olson's claims may be barred by the doctrine(s) of equitable estoppel, waiver, and/or unclean hands.

88. Essentia and Innovis acted in good faith and in compliance with all applicable state and federal laws.

89. Essentia and Innovis acted in good faith, in accordance with, and/or in reliance on agency rules and/or interpretations of § 1557 of the Affordable Care Act.

90. Essentia and Innovis did not act with negligence, disregard, or indifference to Olson.

91. To the extent any damages exist, they were not proximately caused by Essentia or Innovis, but rather were due to or are the result of circumstances over which Essentia and/or Innovis had no responsibility or control, and/or were due to the actions or inactions of Olson, Tovar, or others.

92. All actions taken by Essentia and Innovis were for legitimate, non-discriminatory reasons.

93. The First Amended Complaint fails to the extent it may be barred by the doctrine of impossibility.

94. Pending the completion of discovery, Essentia and Innovis reserve all affirmative defenses available under law.

WHEREFORE, Essentia and Innovis request this Court dismiss Plaintiff's First Amended Complaint with prejudice; award Essentia and Innovis their costs, disbursements, and reasonable attorney fees as allowed by law; and order such further relief as the Court deems just and equitable.

Dated this 11th day of October, 2018.

VOGEL LAW FIRM

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