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New Jersey Supreme Court Limits The Basis On Which Health Insurers Can Obtain Documents On Ownership And Business Practices From Medical Providers Suspected Of Fraud

On July 18, 2012, a unanimous New Jersey Supreme Court narrowly read the cooperation clauses of automobile insurance policies, and a discovery provision of New Jersey's personal injury protection (PIP) statute, ruling that health insurers cannot rely upon such cooperation clauses or the PIP discovery statute to demand information on ownership, billing practices and referral methods of medical providers who have been assigned PIP benefits by their insureds. In *Selective Insurance Company of America v. Hudson East Pain Management*, A-105-10 (July 18, 2012), insureds who were injured in automobile accidents assigned their PIP medical benefits to their medical providers, who then submitted claims to the insurer to be reimbursed for services rendered to the insureds. The insurer became suspicious of certain treatment patterns and corporate links among the medical providers, and, citing the cooperation clauses contained in the insureds' policies, requested that the medical providers submit data with respect to their ownership structure, billing practices, and compliance with certain regulations. When the medical providers refused to provide that information, the insurer sought a declaratory judgment that the information should be provided, or if it were not, that the providers be deemed ineligible for PIP reimbursement. The trial court granted the relief requested by the insurer, but the Appellate Division reversed, and the Supreme Court affirmed the Appellate Division's decision.

The Supreme Court first held that an assignment of PIP benefits does not create any greater duties on the part of the assignees (the medical providers), than that held by the assignors (the insureds). Under the insurance policies in question, the insureds had a duty to cooperate with the insurer on the "investigation, settlement or defense of any claim or suit" against the insureds. The Court determined that this did not extend to information about ownership or the business practices of the insureds' medical providers merely because the insureds assigned their claims for PIP benefits to those providers. The Court first noted that since "an assignee can have no greater rights than his assignor, it must follow that an assignee can have no greater duties than his assignor." The Court then stated that here the insureds "had no duty to provide information to [the insurer] with respect to the ownership structure, billing practices, or referral methods of the medical providers from whom he or she sought treatment for his or her injuries," and that, accordingly, "the assignment of benefits ... could not serve to impose that duty on the providers."

The Court next ruled that the provisions of New Jersey's PIP discovery statute do not provide a basis for the insurer's request for such organizational and billing practice information. The New Jersey statute provides that, on request by an insurer, medical providers "shall ... furnish forthwith a written report of the history, condition, treatment, dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment, dates and costs of such treatment."

N.J.S.A. 39:6A-13(b). Applying the "clear terms" of the statute, the Court determined that the information sought here by the insurer "far exceeds the statutory limitations of a patient's 'history, condition, treatment, dates and cost of such treatment,'" and ruled that it would not "expand its scope in the boundless fashion the [insurer] seeks merely because the [insurer] has formed a belief that the [medical providers] may not have complied with the requirements of other statutes or regulations."

Finally, the Court refused to find that New Jersey's statutory scheme and public policy against insurance fraud provided a basis, under the circumstances here, to permit discovery of the type of information about the medical providers that was sought by the insurer. The Court recognized the various statutory provisions and state policy to combat insurance fraud, and the obligations imposed on insurers in that battle. These include provisions of the Insurance Fraud Act, which, *inter alia*, requires each automobile insurer to file a plan with the state to detect and prevent fraudulent claims (N.J.S.A. 17:33A-15(a)), and to file an annual report on its "experience in implementing its fraud prevention plan." N.J.S.A. 17:33A-15(b). Insurers who fail to comply with those filings are subject to penalties of up to $25,000 per violation. N.J.S.A. 17:33A-15(c). Moreover, by regulation automobile insurers who insure more than 2,500 vehicles in New Jersey must include a Special Investigations Unit as part of its filed plan, to "[i]dentify[] persons and organizations that are involved in suspicious claims activity." N.J.A.C. 11:16-6.4(a), (b)(6). Here, the insurer argued that these and related statutory and regulatory provisions justified its request for the information it sought from the medical providers. However, because the insurer did not raise these statutory or public policy arguments in the lower courts, the Supreme Court did not accept the insurer's argument and limited its ruling to the policy cooperation clause and PIP discovery statute issues that were raised below.

Practical Effect of the Court's Ruling

While insurance carriers believe that the Supreme Court's ruling may make it more difficult for them (and the state) to investigate potential instances of insurance fraud, the Court took pains to emphasize the "limited nature of our holding in this matter," stating that "we are not to be understood as sanctioning attempts to hamper legitimate efforts to root out instances of fraudulent conduct. Nor should we be understood as restricting insurers' reasonable attempts to comply with their statutory obligations." Since the Court's ruling was indeed based on limited circumstance where the information sought was based on an assignment of benefits, and on the PIP discovery statute, it may well be that the ruling will not seriously hinder efforts to battle insurance fraud. Insurers who suspect such fraud, still have the ability to obtain further information where there is suspicion of fraud – however, they must be aware that they may not do so merely on the basis of policy cooperation clauses that do not require the provision of such information, or on the basis of a PIP statutory provision that permits discovery only of a patient's medical history, condition and treatment in connection with PIP benefits. As the Supreme Court further described the limited nature of its ruling, "[w]e have done no more than address this issue within the framework [the insurer] selected."

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