



NJ Appellate Division Affirms Garcia Decision: Upholds Waiver of Co-Insurance

By Debra C. Lienhardt, Esq.

AFTER NEARLY A year of waiting, the New Jersey Superior Court - Appellate Division (the “Appeals Court”) issued its much-anticipated opinion in response to HealthNet of New Jersey claims on appeal.¹ The Appeals Court concluded that HealthNet’s claims on appeal were without merit — affirming the trial court’s decision. Although unpublished, the Appeals Court’s ruling is important, as it addresses issues that have been a significant source of friction between insurers and providers in New Jersey. Specifically, the Appellate decision found that the act of submitting a false claim without specific intent or knowledge of falsehood was not a violation under Insurance Fraud Protection Act (“IFPA”); out-of-network providers did not have a duty to collect co-insurance and failure to collect was not a violation under the IFPA; and referrals to out-of-network facilities did not tortuously interfere with an in-network contract.

In its appeal, HealthNet charged that an “erroneous knowledge” standard had previously been applied to its IFPA claims and that the trial court erred in holding that a provider who waived payments of co-insurance did not misrepresent the provider’s charges. By way of background, the Garcia suit was instigated by physician owners of Wayne Surgical Center, LLC (“Wayne”) who brought claims against HealthNet relating to HealthNet’s termination of their medical practice provider agreements. HealthNet countersued the physicians for Codey Law

violations for the physicians’ self-referral to Wayne, arguing that such referral amounted to fraud under the IFPA.

The trial court found that the referrals were in violation of the Codey Law and, however, held that HealthNet had no recourse against the physicians or Wayne because no private cause of action existed under the Codey Law. The trial court also held that there could be no finding of fraud as the physicians lacked the requisite “intent” in light of widespread industry belief (based on administrative guidance from the New Jersey Board of Medical Examiners) that such referrals were permissible.

The Appeals Court rejected HealthNet’s and the NJ Attorney General’s arguments that the submission of a misleading claim alone was enough to establish fraud. In doing so, the Appeals Court opined that in addition to the physical act of submitting a false claim, the biller must also have “knowledge” of the falsehood when submitting such a claim.

Since the IFPA does not define “knowing,” the Appeals Court noted that the trial court had discretion to interpret its ordinary meaning. The Appellate Court agreed with the reasonable standard upheld by the trial court since Wayne’s physician owners had a reasonable basis to believe that the referrals were lawful; the Wayne ownership structure was not hidden, and absent clear guidance from regulatory agencies saying otherwise.

With respect to the waiver of co-insurance, the trial court found that the out-of-network ASC did not act unlawfully

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in routinely failing to collect co-insurance from patients. The trial court concluded that although the patient was otherwise obliged to pay, the out-of-network ASC had no legal or contractual obligation to collect co-insurance. Moreover, the trial court held that the insurance claims did

not fraudulently misrepresent Wayne's charges, because the center required all patients to agree in writing to pay co-insurance and did not know at the time it submitted claims whether it would enforce the requirement. The ruling applies to out-of-network benefits and should be distinguished from a co-payment which is an obligation arising under in-network benefits.

The Appeals Court observed that there were no statutes, regulations or regulatory directives that outlaw the waiver of a contractual right to collect co-insurance. It also noted that Wayne's "mere" failure to collect co-insurance was not fraudulent, absent a duty to collect.

While the new ruling allows the waiver of co-insurance in some instances, providers should be aware that it may not provide them protection under IFPA if they advertise waiver of patient co-insurance, or displays the intent to waive co-insurance or enter into an agreement to do so in advance. Nevertheless, the decision comes at a time when insurers in New Jersey are desperately trying to discourage members from using out-of-network benefits, and large insurers are similarly trying to shape the national agenda for reform. With this as a backdrop, the decision should be viewed as a victory, or perhaps, a temporary shift in momentum that will fuel the protection of patient rights and promote provider choice.

Still, the decision does not make issues surrounding waiver of co-insurance any less complicated. To maximize the benefits of the decision, we strongly recommend that providers consult with an attorney to review billing policies and procedures.

Debra C. Lienhardt, Esq. is a member in the health law practice group at Brach Eichler LLC, a law firm located in Roseland, NJ. Joseph B. Vas, an associate in the group, also contributed to this article. ■

Reference

1. Appeal of its NJ trial court decision in Garcia v. HealthNet of New Jersey Inc. 16 HLR 1479, 12/13/07

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101 Eisenhower Parkway • Roseland, New Jersey 07068
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