Florida Appellate Review

Published By Dan Bushell

FLORIDA'S 4TH DCA SAYS PIP POLICY PAYMENT TERMS TRUMP STATUTORY LIMITS

Posted by Dan Bushell on June 05, 2011

Building on its May 4, 2011 decision in *MRI Associates of America, LLC v. State Farm Fire & Casualty Company*, No. 4D10-2807, which I covered in this recent post, Florida's Fourth District Court of Appeal issued a second major PIP decision on May 18, 2011, *Kingsway Amigo Insurance Company v. Ocean Health, Inc.*, No. 4D10-4887.

As noted in my entry on that case, in *MRI*, the court interpreted medical providers' obligations when submitting claims for reimbursement under PIP, holding that their claim forms must state not the amount they usually charge for the treatment at issue, but the exact amount the insurer's policy requires it to pay.

In *Kingsway*, the 4th DCA dealt with the other side of the coin: insurers' payment obligations. The decision addresses when a PIP insurer can take advantage of Florida Statutes Section 627.736(5)(a)2, which was added in the 2007 amendments to the PIP statute. Subsection (5)(a)2 allows PIP insurers to "limit reimbursement to 80 percent of" the amount Medicare Part B will pay for the treatment, of if not covered by Medicare Part B, the reimbursable amount for the treatment under workers' compensation.

The crux of the 4th DCA's holding was that an insurer cannot limit its reimbursement amounts as provided by the 2007 amendments unless the language of the patient's auto insurance policy explicitly states that the insurer will do so. If not, the insurer must continue to reimburse medical providers for treatments at "reasonable" rates as defined under Subsection (5)(a)1.

The result was that Kingsway, the insurer, had to reimburse Ocean Health, the provider based on "reasonable" rates, not Medicare Part B rates. The court reasoned that because Kingway's policy said only that it would reimburse at reasonable rates, the insurer, in effect, had promised to provide benefits at a higher level than the minimum required by statute.

Importing the 5th DCA's reasoning in *State Farm Florida Insurance Co. v. Nichols*, 21 So.3d 904 (Fla. 5th DCA 2009), which involved homeowner's policies, the 4th DCA held that when an insurance statute allows insurers to choose alternative methodologies for reimbursement, an insurer can only take advantage of the methodologies its policy allows.

Who Won?

On the surface, PIP medical providers might see *Kingsway* as a welcome decision in their favor after the unfavorable result in *MRI*. But on closer inspection, it's less clear that the decision benefits providers.

In the last paragraph of the decision, the court draws on the holding in *MRI* as support for its conclusion in

Kingsway. If providers must submit claims for the exact amount the insurer is required to pay them (per the holding in *MRI*) the 4th DCA reasoned, then they must be able to look at their patients' insurance policies and determine the methodology the insurer will use to pay them.

So *Kingsway* reinforces that medical providers will now have to consult each of their PIP patients' policies in order to submit a claim for each treatment. *MRI* left open the possibility that a provider could avoid that burden by submitting all PIP claims at Medicare Part B rates (or where not covered by Medicare Part B, at workers' compensation rates). But *Kingsway* appears to put the kibosh on that idea.

From the perspective of Kingsway and other PIP insurers, the immediate result is, of course, a loss. PIP insurers will have to reimburse some medical providers based on "reasonable" rates, which, presumably, will generally be higher than Medicare Part B and/or workers' compensation reimbursement rates they'd prefer to use.

But I expect that the impact of this decision will be short-lived. Any Florida Auto Insurer that has not yet changed its policy forms to explicitly incorporate the power to limit reimbursement based on the 2007 amendments is now on notice to do so. I'm sure they will make those changes in short order.

So it won't be long until all medical providers can safely assume that all PIP insurers will pay them based on Medicare Part B and/or workers' compensation rates, and return to submitting claims without consulting the payment terms of their patients' PIP policies. And all PIP insurers will be able to rest assured in reimbursing providers at those lower rates.

Florida Appellate Review

Bushell Appellate Law, P.A.
2000 Glades Road, Suite 110 Boca Raton, Florida 33431