MSC Opinion: Priority Health v Commissioner of the Office of Financial and Insurance Services

5-23-2011 by Julie Lam

A minimum employer contribution requirement in a health insurance policy requires employers to pay a certain portion of its employees' health insurance premiums, which combats adverse selection. The small employer group health coverage act (SEGHCA), MCL 500.3701, *et seq*., requires insurance carriers to issue any health benefit plan that it markets to any small employer that (1) applies for the health benefit plan; (2) agrees to pay the premium; and (3) agrees to "satisfy the other reasonable provisions of the health benefit plan not inconsistent with this chapter [chapter 37 of the Insurance Code, MCL 500.100 *et seq.*]." MCL 500.3707(1).

Priority Health sought a declaratory ruling from the Office of Financial and Insurance Services - now the Office of Financial and Insurance Regulation (OFIR) – asking whether a health maintenance organization may include a minimum employer contribution requirement if the minimum is reasonable and uniformly applied. OFIR concluded that it would be inconsistent to allow a minimum contribution requirement at the time coverage is issued because a separate provision of the SEGHCA requires small-employer carriers to guarantee renewal of the health benefit plans except for six expressly identified circumstances, of which the failure to pay a minimum employer contribution is not one. MCL 500.3711. And OFIR concluded that Priority Health's minimum employer contribution requirement was unreasonable because it was inconsistent with the guaranteed-renewal provisions. The circuit court affirmed, as did the Court of Appeals. The Court of Appeals, likewise based on the guaranteed-renewal provisions in MCL 500.3711, determined that it would be "unreasonable and inconsistent to require [minimum employer] contributions as a prerequisite for initial coverage when renewal could not be denied on the basis of a failure to pay those contributions." In *Priority Health v Comm'r of the Office of Fin & Ins Services*, No. 139189, published on May 17, 2011, the Michigan Supreme Court reversed.

The Michigan Supreme Court ruled 7-0 that OFIR's interpretation of the act is erroneous. The Michigan Supreme Court held that merely because the Legislature did not include noncompliance with a minimum employer contribution requirement among the guaranteed-renewal provisions does not mean such a provision is unreasonable or inconsistent with MCL 500.3711. The Court explained that even though the act does not expressly allow small-employer carriers to include a minimum employer contribution provision in their health insurance policies, the act does allow them to include provisions that are "reasonable" and "not inconsistent" with the act. The Court emphasized that guaranteed-renewal provisions do not limit the initial coverage in a policy, but rather mandate the renewal of the initial policy after it is in effect. The act does not require that a provision be expressly authorized before a carrier can include it in a policy.

The Michigan Supreme Court indicated that under the Court of Appeals' rationale, any provision in a health benefit plan that MCL 500.3711(2) does not expressly allow would be unreasonable and

inconsistent with the act. The Michigan Supreme Court recognized that Court of Appeals' decision would prevent carriers from requiring employers to agree to arbitration clauses, merger and integration clauses, or any other common, contractual terms. The Court concluded that although MCL 500.3711 could preclude certain provisions that conflict with the six enumerated reasons for termination or nonrenewal, such as a termination-at-will provision, MCL 500.3711 does not preclude a reasonable provision in a policy for initial coverage that does not confilct with the enumerated reasons.

The Michigan Supreme Court declined to address whether minimum employer contribution requirements are unreasonable or inconsistent with the act for any other reason than that presented, and remanded to OFIR to make that determination. Chief Justice Young issued a concurring opinion suggesting reasons why minimum employer contribution requirements might not be reasonable.

Disclaimer: WNJ represented Priority Health, the prevailing Petitioner-Appellant in this case.