no-fault newsline

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A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

Secrest Wardle Establishes Medicare Rates Apply in Home Health Reimbursement Cases

By Justin A. Grimske **March 22, 2024**

In *Central Home Health Care Servs Inc v Progressive Mich Ins Co*, ___ Mich App ___; ___ NW2d ___ (Docket No. 364653), a case handled by Secrest Wardle at the trial court level and on appeal, the Court of Appeals unanimously held that reimbursement for home health services is limited to 200% under MCL 500.3157.

SECREST WARDLE NOTES

The panel did find that there remains a question of fact for the lower court. That is, whether the calculations of the specific amounts in this case were properly calculated, as argued by the parties in the lower court. On remand, the parties are able to argue their respective positions as to what is the proper amount that represents 200% of the amount Medicare would pay.

The case stemmed from Plaintiff's action to obtain payment for alleged in-home skilled nursing care and in-home physical therapy it provided to Defendant's insured. At the trial court level, Defendant, Progressive moved for partial summary disposition under MCR 2.116(C)(10), on the ground that Plaintiff was precluded under MCL 500.3157(2)(a) from recouping the full amount of the claimed charges. Defendant argued that under this statute, Plaintiff was limited to recovering 200% of what Medicare would have paid for the services. In response, Plaintiff argued that MCL 500.3157(2)(a) did not apply in this case because there was no "fee schedule" under Medicare for in-home healthcare services and Medicare, for purposes of the No-Fault Act, did not provide an amount payable for the services. The trial court agreed with Plaintiff and denied Defendant's motion.

Defendant appealed. In a unanimous, published decision, the Court of Appeals reversed the trial court. In doing so, the panel considered the argument one of purely statutory interpretation. The Court's opinion focused on the statutory language of MCL 500.3157(2)(a) and 3157(15)(f) noting that:

> Under Subsection (2)(a), a provider that "render[ed] treatment or rehabilitative occupational training to an injured person" between July 1, 2021, and July 2, 2022, "for an accidental bodily injury covered by personal protection insurance" is limited to recouping "200% of the amount payable . . . for the treatment or training under Medicare." Hence, Subsection (2)(a) clearly states that if Medicare provides coverage for the treatment or service, then the provider may recover from the no-fault insurer up to 200% of the amount Medicare would pay—i.e., the "amount payable . . . under Medicare." Subsection (7), in contrast, provides the limitations cap only "[i]f Medicare *does not provide an amount payable* for a treatment or rehabilitative occupational training under

> subsection (2)."(Emphasis added.) *Central Home Health Care Services, Inc, et al v Progressive*, at slip op 4.

The opinion further noted that the definition of "Medicare" in section 3157(15)(f) encompasses the "fee for service payments under part A, B, or D of the federal Medicare program . . ." *Id*., at slip op 5. "Pursuant to 42 USC 1395c, Medicare Part A is an 'insurance program' that 'provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part' for eligible individuals as defined under the Social Security Act, 42 USC 301 *et seq.*" The opinion found that this description makes it clear that Medicare provides "fee for service payments" as contemplated by MCL 500.3157(15)(f), and therefore the Legislature's use of the term "Medicare" meant that Parts A, B and F of the federal program "which provides *fee-for-service-payment coverage,* akin to insurance coverage, for certain medical expenses for eligible individuals." *Id*.

In addressing the question before the panel -- determining whether MCL 500.3157(2) or MCL 500.3157(7) applies *is whether Medicare covers the service at issue* – the panel found that Medicare did cover the service at issue, and stated on page 5 of the opinion:

> Considering the description of Medicare provided by the relevant federal statutes, it is apparent that Medicare provides "fee for service payments" as contemplated by MCL 500.3157(15)(f). Accordingly, *the first clause of the definition of Medicare in MCL 500.3157(15)(f) simply states the obvious: the Legislature's use of the term "Medicare" in MCL 500.3157 means Parts A, B, and D of the federal Medicare program, which provides fee-for-service-payment coverage, akin to insurance coverage, for certain medical expenses for eligible individuals. The second clause of MCL 500.3157(15)(f) instructs that certain other adjustments may be made under Medicare for purposes of administering the Medicare program but those adjustments are not related to the actual reimbursement rates and therefore, are not to be considered for purposes of Michigan's no-fault act*.

The Court therefore concluded that for purposes of MCL 500.3157, Subsection (7) does not apply if Medicare covers the treatment or service at issue because coverage under Medicare means that Medicare provides an "amount payable" for the treatment. Under the factual circumstances here, the fact the Medicare covers the service means that the limitations cap is provided instead by Subsection (2)(a). Subsection (7) only applies if there is no Medicare coverage for the treatment at issue. Thus, the trial court erred by determining that Subsection (7) was the controlling provision in this case.

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