Fla. High Court Clears Path for Insurance Companies to Utilize Payment Methodologies Enumerated in PIP Statute

The "billed amount" issue deals with both policy language and Section 627.736(5)(a)(5) of the PIP statute. In plain language, the issue can be summarized as whether an insurer is eligible to reimburse a bill at 80% of the amount billed when that amount is less than 200% of the Medicare fee schedule rate for the corresponding year for which the service was rendered.

Daily Business Review
May 23, 2024
By Joslyn Restivo and Oner J. Kiziltan

The Florida Supreme Court recently issued its decision on one of the most longstanding issues in Florida PIP law by ruling in favor of Allstate in *Allstate Insurance v. Revival Chiropractic*, No. SC2022-0735 (Fla. Apr 25, 2024). The "billed amount" issue deals with both policy language and Section 627.736(5)(a)(5) of the PIP statute. In plain language, the issue can be summarized as whether an insurer is eligible to reimburse a bill at 80% of the amount billed when that amount is less than 200% of the Medicare fee schedule rate for the corresponding year for which the service was rendered.

The analysis of the various arguments both in favor of and against reimbursing 80% of a billed amount for a charge involves the complex interplay between several sections of Fla. Stat. 627.736 (the Florida PIP statute) and specific policy language regarding adoption of the payment methodologies it enumerates.

First, the court looked to Section 627.736 (1)(a), which limits the amount that a provider may charge either an insured or an insurer to a "reasonable amount." In defining what a reasonable amount is, the section lists several factors, including customary charges and payments accepted by the provider for like services or supplies, reimbursement levels in the community, and various federal and state medical fee schedules.

Second, the court analyzed Section 627.736 (5)(a)(1), which is responsible for establishing the "floor" for a Florida PIP reimbursement by allowing insurers to limit payment to 80% of a select schedule of maximum charges, which are further defined in its various subsections. Under subsection (f), an insurer may limit "all other medical services, supplies, and care" to 200% of the allowable amount under the participating fee schedule of Medicare Part B; Medicare Part B in the case of services, supplies, and care provided by ambulatory surgical centers and clinical

laboratories; the durable medical equipment prosthetics/orthotics and supplies fee schedule of Medicare Part B, in the case of durable medical equipment; and the workers' compensation fee schedule when a particular service or supply is not covered under Medicare but is covered under workers' compensation.

Finally, the court analyzed Section 627.736 (5)(a)(5), which requires notice of an insurer's election to limit reimbursement by utilizing the schedule of maximum charges and establishes that an insurer may pay the amount of a charge when the charge itself is less than the amount allowed under sub paragraph 1 (the previously mentioned fee schedules). To better understand the crux of the argument, one must analyze the language of (5)(a)(5):

> An insurer may limit payment as authorized by this paragraph only if the insurance policy includes a notice at the time of issuance or renewal that the insurer may limit payment pursuant to the schedule of charges specified in this paragraph … If a provider submits a charge for an amount less than the amount allowed under subparagraph 11, the insurer may pay the amount of the charge submitted.

The sentence "the insurer may pay the amount of the charge submitted" forms the crux of the billed amount argument. Revival Chiropractic's contention was that this sentence acts as a requirement so that when an insurer elects to pay the amount charged, they must do so by paying 100% of the charge as billed without the statutory 20% reduction enumerated under Fla. Stat. 627.736(1)(a) and 627.736(5)(a)(1). In other words, the argument the plaintiff made in this suit is that Allstate may only reduce a bill by 80% when they are reimbursing a charge by utilizing the payment methodologies under 627.736(5)(a)(5), and Allstate must pay 100% of a charge if the charge was billed at an amount that is lower than the reimbursement level found by utilizing one of the schedule of maximum charges, and they are not electing to reimburse said charge at that level.

As an example, a typical illustration of this issue would appear as follows: a medical provider bills a service at $100 while the Medicare fee schedule rate is $52 for said service. Under the terms of the statute, were an insurer to elect to reimburse this service pursuant to the schedule of maximum charges, they would reimburse 80% of 200% of the Medicare Fee Schedule, thus reimbursing a total of $83.20. However, were an insurer to determine that $100 is a reasonable amount (one would think a medical provider would agree that this is the case given that this was the amount that they chose to bill), they may then reimburse 80% of that amount, and thus would reimburse the provider at $80, resulting in a $3.20 saving. Since PIP benefits are statutorily limited to $10,000, it is easy to see how this kind of payment methodology could act to provide an insured with more PIP benefits by providing a savings at the individual service level.

The Florida Supreme Court had previously issued a ruling on a case with an almost identical issue in *MRI Associates of Tampa v. State Farm Mutual Automobile Insurance*, 334 So. 3d 5577 (Fla. 2021). In *MRI Associates*, the Second District Court of Appeals certified the following question of great public import: "Does the 2013 PIP statute as amended permit an insurer to conduct a fact

dependent calculation of reasonable charges under Section 627.736(5)(a) while allowing the insurer to limit its payment in accordance with the schedule of maximum charges under Section 627.736(5)(a)(1)?" In analyzing the issue, the Florida Supreme Court rephrased the question as: "Does Section 627.736(5)(a), Florida Statutes (2013), preclude an insurer that elects to limit PIP reimbursements based on the schedule of maximum charges from also using the separate statutory factors for determining the reasonableness of charges?"

The argument presented by MRI Associates of Tampa was that State Farm was required to elect either the reasonable charges method of calculation under Fla. Stat. 627.736 (5)(a) or the schedule of maximum charges method of calculation under Section 627.736 (5)(a)(1), and that its use of a "hybrid methodology" to reimburse specific codes in either way (which would result in the lowest possible reimbursement) was unlawful.

State Farm countered this argument by asserting that the schedule of maximum charges is designed to operate as a limitation on reimbursement by establishing a cap. In other words, the schedule of maximum charges "established a ceiling and not a floor." Therefore, if the billed amount for a service is less than the amount calculated by utilizing any of the fee schedules enumerated under Fla. Stat. 627.736(5)(a)(1), the lower amount may be utilized as that would constitute the floor for a lawful reimbursement.

The court sided with State Farm in *MRI Associates*, ruling that the "reasonable charge" and the "schedule of maximum charges" methods of calculating a PIP reimbursement are not mutually exclusive and that an insurer may elect a hybrid methodology. In other words, an insurer is permitted to reimburse some CPT codes by utilizing the reasonableness method of calculation and others pursuant to the schedule of maximum charges.

While many insurers assumed that the decision rendered in *MRI Associates* was the end of the billed amount issue, the plaintiffs bar continued to make the argument against other carriers, often relying on specific policy language in order to distinguish the issue. However, in its *Revival Chiropractic* decision, the court analyzed its ruling in *MRI Associates*, citing its conclusion that "a reasonable reading of the statutory text requires that reimbursement limitations based on the schedule of maximum charges be understood … simply as an optional method of capping reimbursements rather than an exclusive method for determining reimbursement rates—that is, as a ceiling but not a floor."

In analyzing the statutory provisions at play, the court ruled that the language of subsection (5)(a)5 and subsection (5)(a)1 are permissive and thus designed by the Legislature as a nonexclusive option. Specifically, the court noted the "may pay" wording of section (5)(a)5, concluding that the language is "entirely permissive." Finally, the court concluded that Allstate's policy provides that it will pay 80% of reasonable expenses and that it expressly permits Allstate to pay 80% of the charges submitted, and that nothing in the PIP statute invalidates this policy provision.

As it stands, the Florida Supreme Court has now ruled in favor of insurers on two cases dealing with the billed amount issue. While both cases revolve around the statutory provisions of Fla. Stat. 627.736 and the policy language for both State Farm's and Allstate's individual policies, these decisions should provide a level of protection for most carriers. Most Florida insurance policies

incorporate the schedule of maximum charges found in 627.736(5)(a)1 and its subsections. It is important to note that the Supreme Court identified an additional requirement that an insurer must provide notice of its election to use the schedule of maximum charges pursuant to 627.736 (5)(a)5.

In conclusion, as long as an insurer incurporates the schedule of maximum charges, provides its insured with notice of this election, and does not incorporate language in its policy that would restrict its use of the hybrid methodology, it need not fear reimbursing a charge at 80% of the billed amount. Insurers may utilize this method of reimbursement to maximize an insured's PIP benefits, ultimately to their benefit.

Oner J. Kiziltan and Joslyn Restivo are associate attorneys in the casualty department at Marshall Dennehey. Kiziltan litigates a variety of complex matters involving catastrophic loss, wrongful death, product liability, negligent security, premises liability, rideshare cases, as well as special investigations and fraud. Restivo handles matters involving personal injury protection benefits, special investigations and fraud. They may be reached at OJKiziltan@mdwcg.com or JMRestivo@MDWCG.com.