Dynamic Chiropractic

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Federal Court Emasculates Louisiana Insurance Equality Law

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"What good is an insurance equality law if it doesn't make insurance companies pay us?" Chiropractors throughout Louisiana and the nation may well be asking that question in the wake of a federal court opinion allowing an insurance company to evade that law.

The Issue: Can an insurance company lawfully pay more to MDs performing services in a hospital than to chiropractors performing identical services in their offices?

Background: Louisiana has a fairly strong insurance equality law. It provides that if an insurance policy covers a service which may legally be performed by a DC, the insurance company cannot deny payment to a chiropractor who renders that service. Under that law any provision "deemed discriminatory against any such person or method of practice shall be void." La. Rev. Stat. 668 A (1).

Guarantee Trust Life Insurance Company issued health policies to Louisiana University students with a novel limitation. It would pay no more than $100 per month for:

----[O]utpatient treatment in connection with the detection or correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference as a result of or related to distortion, misalignment, or subluxation of or in the vertebral column---- (Emphasis supplied).

That language tracks verbatim, Louisiana's statutory definition of chiropractic. Chiropractors in Louisiana are prohibited by state law from admitting patients to hospitals. It doesn't take a mental giant to see that under those circumstances chiropractors were the target of the policy provision. An MD rendering the same treatment in the hospital would not be subject to the $100 cap. Discrimination? Yes. Violation of the clear intent of the freedom of choice statute? Yes. Unlawful? Not according to the court in Guarantee Trust Life Ins. Co. v Gavin, 882 F.2d 178 (5th Cir. 1989).

The Holding: Discriminatory Payment Provisions Allowed

The court held that the policy's limitation did not violate the insurance equality law since it was based on the manner in which the service was provided, not on who provided it. In theory, MDs providing the referenced therapy in their offices would be subject to the same $100 limitation. Accordingly, there is no unfair preference among providers -- everyone is treated the same way.

As a matter of technical legal analysis, the court is right. As a matter of effectuating the legislature's clear intent in passing the freedom of choice statute, chiropractors have been effectively ambushed.

What Happens Next? Legislative relief will certainly be sought. As evidenced by the failure of what appeared to be ironclad freedom of choice language, however, little solace can be taken in temporary legislative victories. Imaginative (devious) insurance industry responses to statutory

changes will continue.

The Good News: A Louisiana State Court Disagrees. While the Gavin case was moving through the federal courts, the Chiropractic Association of Louisiana brought a similar case in a state court. The association sued the State Employees Group Benefit Program, alleging that it discriminated against chiropractors by placing illegal limitations on chiropractic treatment. The limitations in the State Benefit Plan were identical to those condoned by the fifth circuit in Gavin. The district court held the restriction void. Chiropractic Ass'n vs. State of Louisiana, Case #280.925 (19th Dist. Baton Rouge, 1989).

Ordinarily, federal courts will defer to the highest state court's interpretation of its own laws. Should the association case be favorably decided by the Louisiana Supreme Court, Gavin's effect in Louisiana would essentially be negated. The fifth circuit's decision would still leave an extremely bad precedent for other federal courts. In the meantime, the enforceability of such contractual limitations is far from clear.

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