

Allstate's New Anti-Fraud Tactic

Editorial Staff

It's not news that the insurance industry is working very hard trying to prevent fraud. It's also not news that insurance fraud is a significant problem in the personal injury arena. However, from coast to coast, Allstate Insurance Company has started to attack insurance fraud aggressively using a novel approach. Rather than filing a lawsuit to recover losses upon discovering what it believes to be evidence of insurance fraud, Allstate is now waiting patiently.

Allstate uses what they call "window cases" to get a look into how the suspected practice conducts its fraudulent business. There are two types of window cases. In the first type, Allstate finds a patient in a case it suspects is fraudulent, and offers them immunity from any lawsuits in return for revealing all the details they know about how the practice works, e.g., whether they actually were treated on the days billed and/or whether modalities and procedures were performed as described in the bills.

In the other type of window scenario, Allstate will contest paying a suspected fraudulent case so the case will go to trial. Allstate's intent here is to depose the doctor in order to better understand how the practice conducts its fraudulent business. In deposition, Allstate will discover if the doctor knows proper diagnosis and treatment, even if they aren't doing it appropriately.

After patiently collecting all the information it can about individual cases, and information obtained from such window cases, Allstate then submits a federal Racketeer Influenced and Corrupt Organizations (RICO) Act case against the practice(s). The intent behind RICO, enacted in 1970, was to make it easier to prosecute organized crime figures, although that was not the exclusive intent. Crimes encompassed by RICO (and that Allstate alleges in its suits) are theft, fraud and money laundering. To fall under RICO, there must be a pattern of racketeering activity. That means at least two acts of racketeering must have occurred. RICO allows private parties to sue, but they must prove there is a "criminal enterprise."

It's reasonable to assume Allstate is using RICO because it allows not only for recovery of attorney fees and costs of going to trial, but also treble damages - triple the amount of actual/compensatory damages. RICO includes treble damages as a way to help drive criminal enterprises out of business. These treble damages can be imposed in both civil and criminal cases, which should be a significant deterrent if people know about this.

The purpose in writing this isn't to defend doctors who practice fraud. The goal actually is the opposite: to deter doctors from choosing fraud as a way to react to the harsh reduction in income managed care organizations have inflicted upon on our profession.

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