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CLIENT ALERT

Recent District Court Case Highlights State Variation in Applying Corporate Practice of Medicine and Global Billing Restrictions to MRI Providers

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On March 25, 2014, the U.S. District Court for the District of Minnesota held that a magnetic resonance imaging ("MRI") provider, a lay entity (i.e., not owned or controlled by physicians), did not violate the state's longstanding corporate practice of medicine ("CPOM") prohibition by:

(1) employing technologists to perform MRI scans,
(2) sending the scans to independently contracted physicians for interpretation,
(3) relaying physician-generated interpretation reports directly to patients' medical providers, and
(4) billing globally for its services (i.e., billing for both the technical component (taking the scan) and the professional component (interpreting the scan)).

The case, *State Farm Mut. Auto. Ins. Co. v. Mobile Diagnostic Imaging, Inc.*, No. 0:12-cv-1056, 2014 BL 83281 (D. Minn. March 25, 2014), arose after State Farm, an auto insurance company, informed Mobile Diagnostic Imaging, Inc. ("MDI"), an MRI provider, that it would no longer honor bills submitted by MDI.[1] State Farm alleged that MDI's practices (specifically (1) and (2) above) violated the CPOM doctrine and sought a declaratory judgment confirming this allegation.

The CPOM Doctrine

Although the CPOM doctrine is applied differently among states (with some states not following the doctrine at all), the doctrine generally prohibits laypersons or lay entities (e.g., business corporations) from practicing medicine by employing or contracting with physicians to provide medical services. The policy reason behind the doctrine is to

[1] Through an arrangement between State Farm and MDI, State Farm provided coverage and reimbursement for MRI scans for its insureds as part of State Farm's provision of no-fault insurance benefits.

prevent general business people from having control over or interfering with physicians practicing medicine, which is a licensed profession.

In Minnesota, the CPOM doctrine is not directly addressed by statute or regulation.[2] This is not unusual. Instead, the CPOM doctrine in Minnesota derives from a 1955 Minnesota Attorney General Opinion ("Opinion") and the state's common law. In the Opinion, the Attorney General found that a nonprofit corporation was permitted to contract with physicians to provide medical services to patients, distinguishing this arrangement from the "objectionable" and impermissible situation of a business corporation doing the same.[3] Further, the Minnesota Supreme Court has held that, "with limited exceptions, the corporate practice of medicine doctrine exists in Minnesota."[4] Despite these pronouncements, however, the State Attorney General and Minnesota Supreme Court have yet to address some of the finer contours of the CPOM doctrine, including how the CPOM doctrine applies to MRI providers.

The *State Farm* Court's CPOM Analysis

In the *State Farm* case, the federal district court in Minnesota was left on its own to resolve several questions relating to the CPOM doctrine. Consequently, the court used a three-step analysis:

First, as part of the court's analysis, the court had to consider whether the technical and professional components of providing MRI services were separable. If inseparable, MDI's provision of services clearly would have violated the CPOM doctrine as the professional component (i.e., reading/interpreting scans) falls within the state's statutory definition of the "practice of medicine,"[5] and MDI is a lay entity. However, after finding no precedent to support a finding that the components of the MRI service were inseparable, and citing a Minnesota statutory provision that appeared to envision lay ownership of diagnostic-imaging facilities,[6] the court held that the components were, in fact, separable. Further, the court found no merit in State Farm's argument that MDI's use of global billing showed that the components were inseparable. The court noted that global billing was common in the industry.

Next, the court turned to whether MDI's performance of the technical component of MRI scans nonetheless violated the CPOM doctrine. Although MDI technologists are subject to education, training, and registration requirements, the court explained that they are not part of a "state licensed profession" and do not exercise independent medical judgment. Accordingly, the court held that the performance of the technical component

[2] Although Minn. Stat. § 147.081 prohibits the "unlicensed" practice of medicine, it does not expressly prohibit the CPOM.
[3] MN Op. Att'y Gen. No. 92-B-11 (Oct. 5, 1955).
[4] *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513, 524 (Minn. 2005).
[5] *See* Minn. Stat. § 147.081.
[6] Under Minn. Stat. § 144.565, diagnostic-imaging facilities are required to provide the health commissioner with "the names of all physicians with any financial or economic interest [in the facility]…and all other individuals with a ten percent or greater financial or economic interest in the facility" (emphasis added).

of scans by MDI technologists was not part of the practice of medicine and, therefore, was not prohibited by the CPOM doctrine.

For the final step in the court's CPOM analysis, the court examined whether MDI's practice of engaging independently contracted physicians to provide scan interpretation could be considered the indirect practice of medicine (in violation of the CPOM doctrine). Minnesota case law has held that a layperson or lay entity may violate the CPOM doctrine by directly communicating the findings of a physician to a patient for the purposes of diagnosis or treatment. Yet, because MDI sends scan interpretation reports to patients' treating physicians (not directly to patients themselves), the court determined that this holding does not apply. Thus, MDI's relationships with independently contracted physicians were not problematic for CPOM purposes.

Collectively, these three considerations led the federal district court in Minnesota to hold that MDI's operations did not violate the CPOM doctrine. No appeal to this decision appears to be pending at this time.

Looking Beyond Minnesota

While the *State Farm* case helps define the bounds of the CPOM doctrine for MRI providers in Minnesota, MRI providers outside Minnesota still have to consult their own state laws, as well as court opinions, within their respective jurisdictions and attorney general opinions or relevant state-specific guidance issued by Boards of Medicine or other regulating entities to determine whether their business practices are compliant. As mentioned earlier, there is significant variation among state approaches to the CPOM. Nevertheless, this new Minnesota case could influence other states' regulations.

In contrast with this new Minnesota case, New Jersey regulations expressly prohibit lay ownership of diagnostic-imaging centers. The relevant regulation provides, "Any diagnostic or screening office offering diagnostic or screening tests for a fee shall … [b]e solely owned and under the responsibility of one or more physicians."[7] As such, in New Jersey, the owner of an MRI center must be a licensed physician (or a group of licensed physicians).

Florida, on the other hand, has not adopted a CPOM prohibition applicable to MRI providers (or otherwise). However, a Florida court ruled that global billing by MRI providers was improper. In this 2004 case, a Florida District Court of Appeal held that an MRI provider that operated in a substantially similar manner as MDI was impermissibly using global billing to bill for its services.[8] This holding was based on a specific Florida statute that requires a provider to "lawfully render" a medical service in order to be entitled to payment for that service. According to this Florida court, "render" does not mean to hire another corporation or independent contractor to perform the medical service on the MRI provider's behalf. As the MRI provider in this case did not "render" the professional component of the MRI service (instead, the MRI provider used

[7] N.J. Admin. Code § 13:35-2.6.
[8] *Regional MRI of Orlando, Inc. v. Nationwide Mut. Fire Ins. Co.*, 884 So. 2d 1102 (Fl. Dist. Ct. App. 2004).

independently contracted physicians like MDI did), the MRI provider was not entitled to seek payment for such component. Therefore, global billing was improper.

Conclusion

While the *State Farm* court ultimately held in favor of the lay MRI provider, this case should prompt MRI providers, both inside and outside Minnesota, to take caution. Specifically, MRI providers should familiarize themselves with any CPOM and/or global billing restrictions in their respective states to ensure compliant billing to patients and third parties. This focus ensures regulatory compliance with state law and limits the risk of litigation and potential nonpayment for services provided.

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