STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN CHIROPRACTIC COUNCIL and MICHIGAN CHIROPRACTIC SOCIETY,

Petitioners-Appellees,

v

COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE SERVICES,

Respondent-Appellant,

and

FARMERS INSURANCE EXCHANGE and MID CENTURY INSURANCE COMPANY,

Intervenors-Respondents.

MICHIGAN CHIROPRACTIC COUNCIL and MICHIGAN CHIROPRACTIC SOCIETY,

Petitioners-Appellees,

v

COMMISSIONER OF THE OFFICE OF FINANCIAL AND INSURANCE SERVICES,

Respondent,

and

FARMERS INSURANCE EXCHANGE and MID CENTURY INSURANCE COMPANY,

Intervenors-Respondents-Appellants.

FOR PUBLICATION
June 1, 2004
9:15 a.m.

No. 241870
Ingham Circuit Court
LC No. 01-093481-AA

No. 241874
Ingham Circuit Court
LC No. 01-093481-AA

Official Reported Version

Before: Fitzgerald, P.J., and Neff and White, JJ.

WHITE, J. (*concurring*).

I join in the majority opinion, except Section IV(A).[1] I write separately to make some additional observations.

The managed-care option at issue here is not expressly provided for by the no-fault act, MCL 500.3101 *et seq.* Thus, it is permissible and enforceable if it does not reduce the coverage required by the act, and is impermissible and unenforceable if it does. *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588; 648 NW2d 591 (2002).

Defendants argue that the managed-care option does not reduce the coverage mandated by § 3107 because, through the managed system, all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation are covered. Acknowledging that this action was brought by provider groups, the dispositive inquiry in determining whether the endorsement violates the act is whether its enforcement results in the insured receiving less than the statutorily mandated coverage. Under the endorsement, the insured only receives the full benefits mandated by the act if services are obtained from a managed-care provider. If the insured, or a member of the insured's household, is injured and seeks a service from a provider that is not part of the managed-care network, a deductible that exceeds the amount permitted under the statute is incurred, and the amount to be paid for the reasonably necessary service will not be the reasonable charge, as required by statute, but the amount under the carrier's usual and customary fee schedule. Stated differently, while the endorsement may provide the required coverage if the insured goes to a managed-care provider, it clearly does not provide the required coverage if the insured does not go to such a provider. This is a violation of the no-fault act.

Defendants argue that the no-fault system contemplates that the insured will have a free choice of providers, and that this aspect of the act is not violated because all that is done here is that the choice is made when the insurance contract is entered into, i.e., the insured agrees at that time that the insured will only seek services from certain providers. The insurer and the insured may agree to anything that does not reduce the coverage provided by the act. If the insured chooses to restrict his or her options in exchange for a premium reduction, and then after injury honors that choice, the statute is satisfied. However, if the insured chooses to seek reasonable services for a reasonable charge from a provider that is not part of the managed-care network, and the insurer does not pay that charge, the no-fault statute has been violated. Thus, I conclude that the penalty provisions of the endorsement are illegal and unenforceable, and the commissioner should have withdrawn its approval. It is a separate question, not presented here, whether the endorsement would be valid if compliance after injury were voluntary on the part of the insured.

I also observe that in mandating that coordinated coverage be offered under the no-fault act, the Legislature acted against the backdrop of a regulated health insurance/managed health-

[1] I do not find it necessary to reach the issue addressed in that section.

care industry. The laws pertaining to that industry evince a careful legislative balancing of the sometimes conflicting interests of the insurers and plans, the health-care providers, and the health-care recipients. No such legislative controls are present here. An insured does not become a Preferred Providers of Michigan network participant by choosing the preferred provider organization endorsement.

/s/ Helene N. White