

STATE OF MICHIGAN
COURT OF APPEALS

GENESIS CENTER, PLC, FLOYD GOODMAN,
M.D., GREGORY MESSENGER, M.D., DAVE
DETRISAC, M.D., GREG UITVLUGT, M.D.,
JOE MASHNI, M.D., FRANK ROSENBAUM,
M.D., HAROLD STERLING, JR., D. P. M., JOHN
THROCKMORTON, D.P.M., URVISH SHAH,
M.D., KENNETH STEPHENS, D.O., CAROL
BEALS, M.D., DIVYAKANT GANDHI, M.D.,
HERBERT ROSS, D.O., KURT RICHARDSON,
M.D., RICHARD FERRO, D.O. and PHILLIP
STORM, M.D.,

Plaintiffs-Appellants,

v

BLUE CROSS AND BLUE SHIELD OF
MICHIGAN,

Defendant-Appellee.

FOR PUBLICATION
December 15, 2000
9:30 a.m.

No. 214867
Wayne Circuit Court
LC No.98-808842 CZ

Updated Copy
February 2, 2001

Before: Bandstra, C.J., and Saad and Meter, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order denying their motion for partial summary disposition and granting defendant Blue Cross and Blue Shield of Michigan's (BSBSM) motion for summary disposition pursuant to MCR 2.116(C)(8) and (I)(2). We affirm.

I. FACTS AND PROCEDURE

Plaintiff Genesis Center, P.L.C. (Genesis) is a freestanding outpatient surgical center in Lansing whose physician-owners (the individual plaintiffs) perform nonemergency surgeries,

which are billed in two separate components: a surgeon's fee and a facility charge. Although the physicians' services are payable under BCBSM policies, Genesis' facility charges are not covered because Genesis is not a participating provider facility. As a result, Genesis applied to BCBSM to participate in its surgical facility program. BCBSM denied Genesis' application, finding that Genesis did not show "evidence of necessity" (EON) because "there remains an excess of operating room capacity in Ingham County." Plaintiffs then filed a complaint and a request for declaratory judgment, alleging that BCBSM's action violated its enabling statute, the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 *et seq.*; MSA 24.660(101) *et seq.* After plaintiffs filed a motion for partial summary disposition pursuant to MCR 2.116(C)(10), defendant moved for entry of summary disposition pursuant to MCR 2.116(C)(8) and (I)(2), arguing, *inter alia*, that (1) the Nonprofit Health Care Corporation Reform Act does not provide for a private cause of action against a nonprofit health care corporation by a health care provider; (2) the EON requirement does not conflict with the Public Health Code; (3) the act expressly authorized BCBSM to establish standards such as EON for provider participation, and (4) such authorization does not constitute an illegal delegation of governmental authority.¹ The trial court denied plaintiffs' motion for partial summary disposition and granted defendant's motion for summary disposition. The court ruled as a matter of law that plaintiffs did not have standing because they had no private right of action against BCBSM.

II. ANALYSIS

We conclude that the trial court did not err in holding that plaintiffs could not sue BCBSM for an alleged violation of the Nonprofit Health Care Corporation Reform Act, MCL 550.1101 *et seq.*; MSA 24.660(101) *et seq.* Under *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698; 552 NW2d 919 (1996), *Detroit*

Area Agency on Aging v Office of Services to the Aging, 210 Mich App 708, 716-717; 534 NW2d 229 (1995), and MCL 550.1402(11); MSA 24.660(402)(11), plaintiffs did not have standing to bring a cause of action directly against BCBSM to enforce the act. We agree with, and adopt as our own, the following analysis of this identical issue, set forth in this Court's recent decision in *Blakewoods Surgery Center v BCBSM*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2000 (Docket No. 213666):

In *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698; 552 NW2d 919 (1996), this Court, citing MCL 550.1619(2) and (3); MSA 24.660(619)(2) and (3), held that "[o]nly the Attorney General and the Insurance Commissioner are entitled to enforce the [NHCCRA] directly against a health care corporation." The panel further ruled that "[t]he only private right of action directly against a health care corporation authorized by the [NHCCRA] is an action by a subscriber against a health care corporation for damages." *Id.*, citing MCL 550.1402(11); MSA 24.660(402)(11). If a health care provider claims that a health care corporation has violated the act, the recourse provided in the statute is to "commence an action in the Ingham Circuit Court to compel the Insurance Commissioner to enforce the act." *Id.* Additionally, a health care provider can petition the attorney general to commence an action to enjoin violations of the act. See MCL 550.1619(1) and (2); MSA 24.660(619)(1) and (2). The act contains no provision, however, for a private right of action such as that brought in the instant case.

Moreover, the NHCCRA created new rights and duties that did not exist at common law. In such situations, this Court has held:

"Where a new right or a new duty is imposed by statute, the remedy provided by the statute for enforcement of the right or for nonperformance of the duty is exclusive unless the remedy is plainly inadequate. Plaintiff was not precluded from communicating its concerns to the Attorney General's office or to the local prosecutor. These parties, being specifically designated by the Legislature to act in situations such as these, are sufficiently capable of forwarding plaintiff's grievance in the appropriate forum when the circumstances so dictate. Because plaintiff is not without an adequate remedy, we conclude that it lacked standing to raise the . . . issue in the trial court." [*Blakewoods, supra*, slip op at 2, quoting *Detroit Area Agency on Aging, supra* at 716-717 (citations omitted).]

Although *Blakewoods* is an unpublished opinion and, therefore, not precedentially binding, MCR 7.215(C), because we find its analysis persuasive and dispositive of this matter, we adopt its holding and rationale.

Accordingly, the trial court did not err in dismissing plaintiffs' claims on the basis that they did not have standing to bring a cause of action directly against defendant.²

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Patrick M. Meter

¹ Defendant also notes that plaintiffs' complaint is virtually identical to a complaint filed in *Blakewoods Surgery Center v BCBSM*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 2000 (Docket No. 213666). There, our Court held that there is no private right of action under the act against BCBSM, that BCBSM's use of the EON criteria was authorized by statute, was constitutional, and does not conflict with the Public Health Code.

² Having disposed of this matter on the standing issue, we need not address the other issues raised by the parties.