

HEALTH INSURANCE LAW UPDATE

Re: Perils Of The Affordable Care Act - Health Insurer May Be Liable For Coverage Denial Delaying Treatment For Pre-Existing Condition

In November 2013, plaintiff developed a condition his providers identified as “highly symptomatic of cancer.” Plaintiff promptly purchased a health insurance policy with an effective date of January 1, 2014. Three weeks later, on January 24, plaintiff sought pre-certification for a diagnostic procedure, which was erroneously denied based on a March 1 policy effective date. Plaintiff appealed and three weeks later the decision was reversed.

The denial of coverage delayed plaintiff’s diagnosis and treatment for pancreatic cancer. Plaintiff sued the health insurer for breach of contract and bad faith. The insurer moved to dismiss, arguing no claim was stated because the coverage denial was reversed by the internal appeal process. The court rejected this argument for two reasons. First, the court found the appeal process was not mandatory. Second, plaintiff’s breach of contract claim was not based on the failure to follow the appeal process, but rather the failure to honor the policy’s effective date. The breach, therefore, accrued on the date of denial. The reversal on appeal might mitigate damages, but was not a cure.

The insurer also moved to dismiss plaintiff’s bad faith claims because the delay in treatment was short and the appeal was decided before the appeal deadline. The court found the complaint sufficiently alleged the initial denial was unreasonable and in reckless disregard of plaintiff’s rights. The court further found plaintiff plausibly alleged bad faith based on the insurer’s refusal to expedite review of plaintiff’s pre-certification request after the appeal.

A copy of the district court’s decision may be found [here](#). If you have any questions or concerns, please contact Bryan D. Bolton, at 410.659.7754 or bbolton@fblaw.com.

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