

HEALTH INSURANCE IN THE SPOTLIGHT, BUT WHAT ABOUT EFFICIENCY?

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A casual observer will tell you that healthcare in the United States is a hot topic. During this election year, every candidate has a plan to "fix" the broken healthcare system, and provide healthcare for every American. The problem? The candidates utterly fail to address one of the real problems with healthcare: inefficiency. Health insurance carriers are blamed for the soaring costs of healthcare, yet some of the most unnecessary expenses carriers face today relate to the costs of mistakes. Often, another policy besides the health insurance is liable. Unfortunately, it is extremely difficult to compel workers' compensation to cooperate, and very few Americans understand how medical payments coverage works, let alone how to file a medical claim with their own auto insurance or homeowner's policy. When others fail to coordinate benefits, it costs everyone. As a result, some claims adjusters are too hesitant to pay claims that are the health insurance carrier's responsibility, resulting in expensive and time consuming appeals. Inefficiency is one of the greatest costs the healthcare industry faces today, and yet it is hardly ever mentioned.

Nobody wants to see the health insurance goliath pass the buck and shift blame to witless providers and injured plan members. Rather, the media portrays health insurance greed as the sole cause of skyrocketing costs. Just when our focus as an industry should be on reducing costs of healthcare by enforcing coordination of benefits, the populace has made health insurance subrogation public enemy number one. For example, the Wall Street Journal featured the tale of a woman, left permanently brain-damaged after colliding with a truck, whose medical expenses were paid for by her employer's plan. After her family received a settlement, the employer laid claim to the money. Courts of federal jurisdiction found in favor of the plan. Courts of public opinion, however, were swayed in the opposite direction.

What long term effects will absolute enforcement of subrogation terms have? If legislators are convinced that their constituency stands against health plan subrogation, what new laws will they pass to eliminate the right to subrogate? Following last August's bridge collapse in Minnesota, state lawmakers are desperately trying to hinder the ability of insurers to reclaim dollars spent, working on a way to prohibit insurance subrogation efforts from tapping into relief funds. The politicians hope that health plans will yield to political pressure and realize the negative publicity they would face if they attempt to recover funds from bridge victims.

To date, health insurance carriers have chosen to "hang their hats" on legal precedent. What they don't understand is how tenuous such precedent is. For instance, the Supreme Court which held that if a plan reserves a discretionary right, courts will question administrator decisions only if there is no reasonable basis for that decision, *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), has recently succumb to public pressure, becoming stricter in their analysis of plan terms, *Rush Prudential HMO, Inc. v.*

Moran, 536 U.S. 355 (June 20, 2002).

With alarming frequency, legislators are passing bills to counter subrogation. Courts are finding reasons to question plan denials, and interpret plan terms for themselves. Health insurance carriers are losing the right to administer their plans and coordinate benefits with other parties. Yet, these very rights are necessary for the efficient administration of health insurance and reducing the cost of healthcare. To find a balance and prevent further prohibitive legislation from being passed, we as an industry need to do a better job of teaching the population why coordination of benefits and subrogation are necessary for the efficient administration of healthcare, and do a better job of efficiently enforcing those provisions.