



Garcia v. Health Net of New Jersey, 2009 N.J. Super. Unpub. LEXIS 2858 (N.J. App. Div. 2009)

Topics Covered: Physician Self-Referral

Outcome: Very Favorable

Issue

The issues in this case were whether physician-owners of a surgical center properly referred patients to that center and whether those physicians committed fraud by submitting insurance claims to Health Net of New Jersey without undertaking more vigorous collection efforts against their patients for their co-payment obligations.

AMA Interest

The AMA believes that: (1) physician ownership interests in health facilities, products or equipment can benefit patient care; (2) physicians should be able to refer patients to a facility in which they have an investment interest when they are directly providing care to those patients; (3) fraud and abuse in medical practice should be limited to intentional acts of misconduct and activities inconsistent with accepted medical practice; and (4) physicians should be able to use discretion in sending patient accounts to collection.

Case Summary

The plaintiff physicians (and a podiatrist) sued Health Net of New Jersey for an injunction to prevent termination of their network participation contracts. Health Net countersued, alleging that the plaintiffs sought payment for care of patients referred in violation of the Codey Act, a state law prohibiting the referral of patients to a facility in which a physician has an ownership interest. Health Net also challenged the surgery center's out-of-network billing practices.

The trial judge found that the physicians had violated the Codey Act, notwithstanding an opinion of the New Jersey Board of Medical Examiners that doctors may personally treat their patients in facilities that they own, as well as bill for those services. However, the court found that private parties are not authorized to enforce the Codey Act. The judge also found that there was no evidence supporting the scienter element of Health Net's fraud claim, since Wayne Surgical Center and many other similar facilities had been allowed to operate under a largely unenforced law. Additionally, the judge found no wrongdoing in the doctors' not collecting co-insurance payments from patients for out-of-network surgeries.

Health Net appealed to the Appellate Division of the Superior Court and the Appellate Division affirmed the trial court decision.

Litigation Center Involvement

The Litigation Center, along with the Medical Society of New Jersey filed an amicus curiae brief in support of the physician-owners and the surgery center.

Superior Court of New Jersey brief