

Court Enforces Florida's HMO Act Holds in favor of Miami pathology group

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A Florida appeals court recently issued an opinion affirming a jury verdict awarding more than \$1.5 million to a Miami pathology group. While the decision specifically concerned whether a Florida HMO must compensate the pathology group for the professional component of clinical pathology services, the court's opinion more broadly establishes that medical providers can successfully sue HMOs operating in Florida to enforce the statutory provisions governing HMOs, including those concerning reimbursement.

In 1999, Florida's largest health insurer, Blue Cross and Blue Shield of Florida (BC/BS), unilaterally changed the reimbursement policies of its HMO, Health Options, Inc (Health Options). BC/BS decided that, in order to save an estimated \$4.1 million per year (according to its own internal documents), it would change its long-standing practices and no longer pay hospital-based pathologists for their professional clinical laboratory services. BC/BS's stated rationale was that it was already paying the hospitals for such services.

In 2005, Palmetto Pathology Services, a hospital-based provider that was not contracted with Health Options, brought suit against Health Options in Miami-Dade County to enforce the laws

governing HMO reimbursement. Palmetto Pathology specifically sought to recover its full-billed charges on all unpaid claims submitted to and denied by Health Options for professional clinical pathology services rendered to Health Options' subscribers at two

ing to compensation. With respect to the professional pathology services that were specifically at issue in the case, the court found that such services were "approved physician care" rendered to Health Options' subscribers, for which Health Options was legally obligated to

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Nearly two years later, in April 2007, Palmetto Pathology prevailed at trial and was awarded its total billed charges plus interest. Health Options thereafter appealed to the Florida appellate court and the appellate court, on April 16, 2008, upheld the trial court's decision. The appellate court explained, in a well-reasoned 16-page opinion, that medical providers in Florida may bring lawsuits against HMOs to enforce the statutory and administrative regulations governing HMOs, including those relat-

pay Palmetto Pathology.

Clearly, this case is a significant victory for Florida pathologists, as well as for all Florida physicians having dealings with HMOs.

Steven Weinstein is a partner in K&L Gates' Miami office, and Robert Leitner is an associate. Both submitted a brief in the Palmetto Pathology case on behalf of The Florida Society of Pathologists, The American Pathology Foundation and The Florida Hospital Association. For a copy of the appeal court's decision, call 305.539.3300; steve.weinstein@klgates.com.