Blues Curtail Patient Provider Rights

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November 5, 2013

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Under the conversion of Blue Cross Blue Shield of Michigan ("Blues" or "BCBSM") from a non-profit healthcare corporation (PA 350, 1980) to a mutual company (S.B 1293 & 1294), effective in 2014, patients and providers have lost important appeal rights.

Prior to the passage of PA 350 in 1980, substantive negotiations were carried on between the Blues; patients and providers; interested organizations; attorneys and other professionals to fashion a fair and reasonable appeals' process for challenging Blues' determinations. Blues' determinations could be appealed with ultimate finality to the courts. Governor William Milliken signed PA 350 into law.

Decades of often arbitrary decision making by BCBSM had preceded passage of PA 350 and providers and patients were often left without recourse. With the passage of PA 350 further definition and due process were finally a part of the Blues-patient-provider relationship. The passage of the Blues conversion act has resulted in the loss of significant rights and useful precedents to fairly settle disputes between the Blues and relevant parties. Providers are likely to pay the price for the swiftness with which their appeal rights have been dismantled.

An important part of that change for providers is evident in the October 2013 issue of the Blues Record where a headline announces "**BCBSM Provider Official Notice of Changes to Appeals Process**." Blues' rationale appears in the introductory paragraph as follows:

"As we've (the Blues) been telling you, earlier this year Governor Snyder signed Public Acts 4 and 5, the Acts that enable BCBSM to begin a transition to a non-profit mutual insurer, governed by the Michigan Insurance Code rather than Public Act 350. During the transition, we discovered that it was necessary to revise the provider appeals process. The information in this article will serve as official notification of the appeal process changes."

The Blues' article goes on to state that Insurance Commissioner participation in the appeals of Blues' determinations "will no longer serve that function." The Blues go on to state that, "therefore, we must eliminate this step in our provider appeals process and change the language in our agreement and provider manuals to reflect this change."

Patients will have some fundamental rights to appeal any rejection of benefits coverage by The Blues under the Patient Rights to Independent Review Act (MCL 550.1901 et. seq.). However, it appears that providers will no longer have their disputes with the Blues reviewed by The Insurance Commissioner.

It was the existence of PA 350 rights that brought the intervention of the Insurance Commissioner and ultimately the courts to guarantee a fair playing field. Blues' decisions involving providers were subjected to the light of day through agency review before litigation in circuit court. This agency review exercised a restraining influence on the Blues and led to more reasoned and just results. The loss of that intervention, in my judgment, opens a new period of potential abuse by an insurer who has much more resources than typical unhappy providers.

It appears the basic contention of the Blues is the argument that only as a mutual company can it realistically compete with other healthcare insurance carriers given the advent of the Affordable Care Act. This argument is coming from an organization that, give or take, controls 70% of the health insurance market in Michigan. The Blues healthcare monopoly is hardly likely to change. But what will change is that with a purely internal provider review appeal process, pre-1980 decisional power over providers will once again be subject to the Blues monopoly with no vital constraints upon the exercise of its power. As Santayana said, "Those who forget the lessons of history are condemned to relive them."

Unless our public men and women, with executive and legislative responsibility, revisit that pre- PA 1980 history, providers certainly are in for bitter times. No sugar coating with internal review by the Blues will protect health professionals from the totality of the pre 1980 jungle that existed before provider appeal rights were protected by statute.

It is one thing to predict events without a past record to guide us into the future.It is quite another and pure naiveté to expect that the Blues' giant will be tamed without governmental protection and limits, through a fair and reasonable appeal process for providers as we enter a new era in healthcare.