FILE

Reynolds v. Preferred Medical Providers

February 2005

Allen, McBride & Lagos LLP
Attorneys at Law
1251 Bay Street
Margot Bay, Franklin 33501
(555) 424-0900

MEMORANDUM

To: Applicant
From: Arthur McBride
Date: February 22, 2005
Subject: *Reynolds v. Preferred Medical Providers*

Our client, Rowena Reynolds, is the daughter and sole heir of John Reynolds. John Reynolds died last year of complications from a kidney ailment. In 1995, John enrolled in a health insurance program called Elder Advantage, a type of Medicare plan. This insurance plan was issued by Preferred Medical Providers (Preferred), a health maintenance organization (HMO). The insurance plan is not an employer-sponsored plan governed by ERISA. During the last two years of his life, John and Rowena tried to persuade Preferred and its in-house medical evaluators to authorize and pay for a recently developed kidney therapy. Even though John's physician recommended the treatment, Preferred refused to authorize it.

We recently filed a multi-count complaint in the Franklin state district court against Preferred for damages for wrongful death, medical malpractice, willful misconduct, intentional infliction of emotional distress, and elder abuse. We requested a trial by jury.

John Reynolds' Elder Advantage contract includes a clause requiring subscribers to arbitrate disputes arising under the plan rather than file a lawsuit. The Franklin Medical Insurance Contract Act (MICA), § 63.1, regulates disclosures concerning arbitration requirements in a health care plan.

Preferred acknowledges that the arbitration clause in its Elder Advantage contract violates MICA § 63.1 because the disclosure regarding arbitration did not appear immediately above the signature line. However, Preferred's attorney, William Caldwell, claims that two federal statutes, the Federal Arbitration Act and § 1395mm of the Medicare Act, preempt MICA, and that the Reynolds case therefore must be resolved through arbitration, not litigation. Our position is that another federal statute, the McCarran-Ferguson Act, overrides the Federal Arbitration Act, and that § 1395mm of the Medicare Act does not preempt state regulation.

Please draft for my signature a letter to Preferred's attorney rejecting his arbitration demand and explaining:

1. Why the Federal Arbitration Act does not preempt MICA § 63.1; and
2. Why § 1395mm of the Medicare Act does not preempt MICA § 63.1.

Belle, Bruce & Caldwell LLP

Attorneys at Law

473 Bayliss Court, Suite 8500

Margot Bay, Franklin 33501

(555) 870-4566

February 21, 2005

Arthur McBride
Allen, McBride & Lagos LLP
1251 Bay Street
Margot Bay, Franklin 33501

Re: *Reynolds v. Preferred Medical Providers*

Dear Mr. McBride:

We have received from our client, Preferred Medical Providers ("Preferred"), the complaint you filed on behalf of Rowena Reynolds and her deceased father, John Reynolds.

On July 15, 1995, Mr. Reynolds enrolled in Elder Advantage, a Medicare HMO insurance plan offered by Preferred that provided to Medicare recipients substantial additional benefits. By enrolling, Mr. Reynolds agreed to submit all disputes arising under the plan to final and binding arbitration.

We are aware that Preferred's arbitration disclosure in the Elder Advantage contract does not strictly comply with the requirements of § 63.1 of the Franklin Medical Insurance Contract Act ("MICA") regarding the language and placement of arbitration clauses in health care plans. However, Preferred's marketing materials, including its enrollment contract, were timely and properly submitted to the Secretary of Health and Human Services as required by the Medicare Act, 42 U.S.C. § 1395mm(c)(3)(C), as it existed in 1995, at the time Mr. Reynolds enrolled. That section of the Medicare Act, as well as the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.,* preempt § 63.1 of MICA. *See Casaro v. Super Sub Associates,* 15th Cir. (1996).

On behalf of Preferred, we hereby demand that you agree to submit the Reynolds matter to arbitration pursuant to the Elder Advantage plan. If you do not agree, we will file a motion to compel arbitration, which we are quite confident the court will grant. We will also seek an award for costs and expenses of the motion. If I do not receive your agreement to arbitrate this matter within 10 days of the date of this letter, I will file the appropriate motion.

Very truly yours,

William L. Caldwell

William L. Caldwell

Excerpt from Transcript of Recorded Interview with Rowena Reynolds

May 24, 2004

* * * *

Attorney: Yes, Rowena, I'm sorry about your dad. What happened?

Reynolds: Well, his kidneys just gave out. We tried for almost two years to get his health care plan to authorize a state-of-the-art treatment that Dad's own doctor, Alex Moskovitz, was recommending.

Attorney: What health care plan did John have?

Reynolds: Preferred Medical Providers. When Dad turned 65, he signed up for Medicare and Elder Advantage.

Attorney: How does Elder Advantage work?

Reynolds: It's a health insurance plan. Preferred advertises itself as an HMO. It contracts with the government to manage and administer claims and benefits under the Medicare program. Elder Advantage members pay a monthly premium, and Preferred furnishes the medical services through hospitals and doctors Preferred contracts with.

Attorney: Whom did you deal with at Preferred, and what reasons did they give you for not authorizing the treatment?

Reynolds: The main guy was a Dr. Phillips, but I got the run-around and kept getting referred to other "claims evaluators," who just said they'd look into it and get back to me. Not even Dr. Moskovitz could get an answer. Piecing it together, it seems their excuse was that it was a new, unproven treatment and far too expensive. It wasn't "scheduled" on the Elder Advantage list of authorized treatments, so they just
wouldn't okay it. Just about the time we thought they might agree to it, Dad died.

* * * *

Attorney: Okay. I know you want to sue Preferred. Let me look into it and I'll get back to you on what I think the best approach is. I think a jury will be very sympathetic to your situation.