Anthem Blue Cross and Blue Shield in Wisconsin

Delta Dental of Wisconsin, Inc.

Humana, Inc.

MHS Health Wisconsin.

Molina Healthcare of Wisconsin

UnitedHealthcare of Wisconsin

WEA Insurance Corporation

WPS Health Insurance

AHI

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**Assembly Bill 539 Collateral Source Position Memo**

1. **Subrogation Recoveries for Health Plans Will Be Negatively Impacted Which Could Lead to Increased Costs for Insureds.**

This legislation is aimed at reducing damage awards in personal injury cases which will, in turn, reduce the amount of dollars available for health plans’ subrogation recoveries. Under current law, health care providers’ billing statements are presumed to state the reasonable value of health care services, and evidence of the amount a health plan paid a provider is not admissible. AB 539 proposes that evidence of “collateral source” payments, i.e., amounts paid to providers by health plans, would be admissible at trial before a jury. Negligent parties’ liability carriers will then be able to argue that the paid amount, not the billed amount, represents the reasonable value of the health care services. With knowledge of both the billed and paid amounts, juries would likely be influenced to award an amount less than if they only had knowledge of the billed amount. If damage awards in personal injury actions are reduced, the overall pot of money from which all parties can share will be smaller.

Under Wisconsin law, health insurers are subject to the “made whole” doctrine, meaning they cannot recover unless an injured plaintiff is compensated for all his/her damages. If damages awarded in personal injury actions go down, there will be more cases where injured plaintiffs will claim they are not “made whole,” ultimately resulting in more litigation between injured plaintiffs and their health plans to resolve how the overall pot of money is distributed. Self-funded non-ERISA plans (e.g., municipalities) may also be subject to the “made whole” doctrine and face reduced recoveries and additional litigation with their employees. While self-funded ERISA plans can contract around the “made whole” doctrine, if the overall pot of money from which all parties must share is smaller, from a practical perspective, these plans will also face reduced recoveries.

Reduced recoveries and increased litigation expenses for health plans could negatively impact premiums for all types of plans.

1. **Negligent Parties and Their Liability Carriers Should Not Benefit From Health Plans’ Contractual Bargain With Providers.**

As proposed, the bill would allow a liability carrier to unfairly benefit from the contractual bargain between a health plan and a provider even though the liability carrier is not a party to that contract. Moreover, premiums charged by liability carriers are based upon a finite exposure (policy limits). Under PPACA, health plans no longer have lifetime maximums for many benefit categories. For some plaintiffs involved in personal injury cases, health plans can end up paying those plaintiffs’ medical claims for years after the underlying lawsuit has been settled.

1. **The Legislation Will Have Other Unintended Consequences for Health Plans and Insureds**.

In order to prove that the amount paid by health plans is the reasonable value the jury should consider and award, defense counsel may serve extensive, burdensome discovery upon health plans to establish the basis upon which the paid amount was determined. While health plans can file motions seeking to limit or quash this type of discovery which would include proprietary information, this will increase health plans’ litigation expenses in subrogation cases.

Health plans may also face increased requests for deposition or trial witnesses to address the reasonableness of payments made to providers. This again would seek proprietary information, be burdensome and increase litigation expenses. If health plan witnesses are required to testify at trial, it will also result in more complicated and lengthy personal injury lawsuits given the involvement of collateral sources. Currently, judges in personal injury cases generally prefer collateral sources are involved as little as possible, if at all.

The impacts of this legislation could result in a more complicated and time-consuming system for all parties involved. If health plans in Wisconsin face increased litigation expenses to obtain less subrogation recoveries, those costs will likely end up being passed along to the consumer.

**AHI and its member companies urge you to oppose AB 539.**