



# Capital Health Systems v. New Jersey Department of Banking & Insurance, 445 N.J. Super. 522 (NJ Super. Ct. App. Div. 2016)

Topics Covered: Tiered and Narrowed Managed Care Networks

## **Outcome: Very Unfavorable**

### **Issue**

The issue in this case was whether the New Jersey Department of Banking & Insurance (“DOBI”) properly approved a tiered network plan of Horizon Blue Cross Blue Shield of New Jersey (“Horizon”) under New Jersey law.

### **AMA Interest**

The AMA believes tiered insurance networks of physicians should disclose the criteria used to create the network and physicians should be allowed to review and correct any inaccuracies in the data used to classify them.

### **Case Summary**

Horizon is the largest health insurer in New Jersey, with more than 50% of the commercial insurance market. Within its already established panel of health care service providers (including hospitals and physicians), Horizon established a tiering system. Patients receive monetary incentives (lower copays and/or deductibles) if they use the services of Tier 1 providers rather than of Tier 2 providers.

Horizon claims it chose the Tier 1 providers because those providers offered better value-based health care and were willing to accept reduced reimbursement rates. Beyond those generalities, Horizon did not disclose the specific criteria used in the selection process or how it weighted the criteria. Also, Horizon acknowledged that some of its criteria were subjective. Providers did not have an opportunity to appeal the selection decision. All of the Tier 1 hospitals entered into exclusivity agreements with Horizon.

The Horizon tiering plan was subject to DOBI approval, and DOBI gave that approval without a public hearing. After the approval was announced, eleven Tier 2 hospitals (but no physicians) objected to the decision. The objectors asserted, primarily (i) the tiered network failed the criteria for network adequacy (including geographic distribution and breadth of specialized medical services) under New Jersey law and (ii) DOBI failed to consider whether the tiered

network plan was consistent with the public interest. DOBI rejected both contentions and refused to withdraw its approval.

The eleven hospitals appealed the DOBI approval to the Superior Court of New Jersey, Appellate Division. On June 7, 2016, the Appellate Division affirmed the DOBI approval, holding that such approval fell within DOBI's discretionary powers.

### **Litigation Center Involvement**

The Litigation Center contributed financially to an *amicus* brief filed by the Medical Society of New Jersey.