



# Michigan State Medical Society v. Blue Cross and Blue Shield of Michigan

2006 Mich. App. Lexis 3776 (Mich. App. 2006) (unpublished opinion)

Topics Covered: Payment Issues (for Physicians), Managed Care Payments

**Outcome: Very Unfavorable**

## Issue

The issue in this case was whether an insurance company serving as a third party administrator could obligate physicians included in its preferred provider listing to charge reduced fees even though the self-funded employer-insurer had no obligation to reimburse the participating physicians, and the administrator made no direct payment to physicians.

## AMA Interest

The AMA supports fair policies and practices regarding payment for physician services.

## Case Summary

Michigan physicians participating in Blue Cross Blue Shield of Michigan's (BCBSM's) PPO network were bound by a Blue Preferred Plan Program Professional Provider Agreement (the "Trust Network Agreement"), which obligated physicians to charge reduced fees for certain "Covered Services" provided to patients enrolled in one of BCBSM's PPO products.

In 2003, the United Auto Workers Union ("UAW") and the three domestic automakers, General Motors, Ford, and DaimlerChrysler (collectively, the "Automakers"), decided, in their collective bargaining agreements, to establish new employee health care plans (the "New Health Plans") to replace their existing health plans. To form these new plans, the Automakers entered into agreements with BCBSM (the "Administrative Service Agreements") for it to provide administrative services, such as claims processing, record keeping, and enrollment tracking, while the Automakers would be responsible for the funding and underwriting.

As for the insureds, the New Health Plans operated in some ways like traditional PPOs. Patients were free to select their physicians and were given incentives to choose a physician from BCBSM's established network. But unlike traditional PPOs, the insureds were required to pay the entire fee for office visits rather than a co-payment, and the UAW and the Automakers had no obligation to reimburse the participating physicians. Nonetheless, physicians bound by the

New Health Plans Trust Network Agreement were obligated to charge the same reduced rate given to patients enrolled in the BCBSM PPO products.

BCBSM issued a letter declaring that any physician who refused to reduce his fee to enrollees of the New Health Plans, in accordance with the terms of those plans, would have his Trust Network Agreement terminated. According to the letter, any such physician would become an out-of-network provider for any patient enrolled in any of BCBSM's PPO products.

MSMS and the Michigan Osteopathic Association (MOA) sued for declaratory and injunctive relief in order to prevent BCBSM from terminating physicians who refused to apply the terms of the Trust Network Agreement to New Health Plan members. MSMS and MOA also sought the court's declaration that physicians in BCBSM's PPO network were not obligated to limit their fees in accordance with the terms of the Network Trust Agreement and that BCBSM was not a "sponsor" of the New Health Plans.

Without the litigants' request, the judge entered summary judgment for BCBSM. She ruled, among other things, that BCBSM was entitled to amend the Trust Network Agreement unilaterally on 60 days notice to its panel members. MSMS and MOA appealed that decision.

On Dec. 21, 2006, the Michigan Court of Appeals affirmed, holding that BCBSM had acted within its discretion under the Trust Network Agreement.

### **Litigation Center Involvement**

The Litigation Center supported the attempt of MSMS to prevent BCBSM from exploiting its PPO network to unilaterally fix the fees physicians charge for office visits by beneficiaries of non-BCBSM insured (but BCBSM administered) health insurance plans.

On July 6, 2006, the Litigation Center filed an amicus curiae brief, subsequently joined by the American Osteopathic Association, to support the MSMS and MOA position on the appeal.

Michigan Court of Appeals brief