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Thousands Of Cases Hinge On Fla. Justices' Allstate Decision

By **Carolina Bolado**

Law360, Miami (January 22, 2016, 10:41 PM EST) -- The Florida Supreme Court's decision to take up Allstate Insurance Co.'s appeal of a ruling that it wrongly paid out motorists' personal injury protection claims according to Medicare fee schedules should clear up widespread confusion among lower courts in thousands of cases, attorneys said.

The state's highest court said Wednesday that it **will review** the Fourth District Court of Appeals' **ruling from August** that a bare reference to the state's personal injury protection statute — which at the time allowed two different methods for paying out claims — didn't constitute sufficient notice that the insurer was electing to employ Medicare fee schedules for PIP claims instead of the other, higher-paying reimbursement method.

With that ruling, the Fourth District revived health care providers' 32 consolidated cases against Allstate and certified a conflict with another Florida appellate district's opinion in another case, Allstate Fire and Casualty Insurance v. Stand-Up MRI of Tallahassee PA, which found Allstate's policy was clear.

"Allstate has written this very vague and ambiguous provision that they stuck in their policies that basically says, 'We can pay whatever we want,'" said David Caldevilla of De La Parte & Gilbert PA, who represents the providers. "It's about a 50-50 split on trial judges across the state. The First District said it looks clear, and the Fourth District said it's not clear."

The claims stem from the policy language in Allstate motorist insurance policies between 2008 and 2013 that the providers claim was unlawfully vague. The language was implemented after the Florida Legislature in 2008 made statutory changes allowing PIP insurance companies two different ways of paying health care claims: either 80 percent of all reasonable expenses for medically necessary procedures or 200 percent of the Medicare fee schedule.

The language in Allstate's policies said the insurer would pay 80 percent of reasonable expenses, but also said any amounts payable under the coverage would be subject to a Medicare fee schedule limitation "or any other provisions of the Florida Motor Vehicle No-Fault Law, as enacted, amended or otherwise continued in the law, including, but not limited to, all fee schedules."

The Fourth District, citing the Florida Supreme Court's 2013 decision in Geico General Insurance Co. v. Virtual Imaging Services Inc., held that a bare reference to the state's personal injury protection statute didn't constitute sufficient notice that an insurer was electing to employ the Medicare fee schedules.

"The policies said they would continue to pay the reasonable amount, but they were not telling their insureds that they were going to pay a lot less," Caldevilla said. "They were paying under this Medicare fee schedule but not telling their insureds."

The First District **disagreed in March** when it ruled in Allstate v. Stand-Up MRI that the policy language was not deficient, as it specifically said that any amounts payable under under the policy's coverage would be subject to "any and all limitations," including fee schedules, authorized by state law.

The Legislature, responding to increased litigation spawned by the 2008 amendment, again in 2013 changed the law so that every insurer follows the Medicare fee schedule regardless of what the company says its policy is, according to Rami Shmuely of Shmuely & Willis PA, who has several PIP cases pending against Allstate.

Most of the other insurance companies amended their policies, paid 80 percent of reasonable expenses and did not put up too much of a fight, according to Shmuely. But Allstate, which is one of the biggest motor vehicle insurers in the state, has dug in its heels, he said.

"Allstate's got tons of these cases where they stuck to their guns and said it's reasonable enough," Shmuely said.

If the Supreme Court rules in favor of the providers, Allstate may be faced with more suits stemming from claims between 2011 and 2013 for which the five-year statute of limitations has not run out, in addition to those suits already pending, according to Shmuely.

The cases pending in county courts around Florida number in the thousands, according to Caldevilla. The amount of each PIP claim varies, but because Florida law requires $10,000 in PIP coverage, most claims are less than that, usually between $250 and $5,000, he said.

"But when you multiply that amount by thousands of PIP claims, it adds up to millions of dollars of unlawful windfall profits to Allstate, while Florida health care providers are getting short-changed by the same amount," Caldevilla said.

Allstate had **urged the state's high court** to take up its appeal, noting that the issue is an important one with statewide impact. The insurer also said that in addition to the split between the First and Fourth Districts, the Second and Third Districts are also currently reviewing essentially the same question.

A representative for Allstate did not immediately respond to a request for comment Friday.

Allstate is represented by Suzanne Youmans Labrit and Douglas G. Brehm of Shutts & Bowen LLP and Peter J. Valeta of Cozen O'Connor.

The providers are represented by Gary M. Farmer Sr. of Farmer Jaffe Weissing Edwards Fistos & Lehrman PL, David M. Caldevilla of De La Parte & Gilbert PA and Stephen Deitsch, William Foman and Lindsay Porak of Deitsch & Wright PA.

The case is Allstate Insurance Co. v. Orthopedic Specialists, case number SC15-2298, in the Supreme Court of the State of Florida.

--Additional reporting by Alex Wolf and Brandon Lowrey. Editing by Mark Lebetkin and Catherine Sum.
