The Georgia Any Willing Provider Statute – Only a Blue Cross Issue?

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A little known and never used provision of the Georgia Insurance Code (“Code”), O.C.G.A. § 33-20-16, commonly known as the Any Willing Provider statute (“AWP”), may now become a powerful tool for health care providers as the result of a recent case holding that the AWP applies to insurance companies organized as health care corporations pursuant to O.C.G.A. §§ 33-20-1 et seq. In essence, the AWP allows any provider of health care services to participate in the network of a health care corporation if the provider accepts the terms that are applicable within the network to similarly situated providers. The recent Supreme Court of Georgia denial of certiorari review of the Northeast Georgia Cancer Care, LLC et al. v. Blue Cross and Blue Shield of Georgia, Inc. et al., 315 Ga.App. 521 (2012), in Case No. S12C1322, effectively ends a multi year dispute and settles some aspects of the applicability of the AWP. This denial of certiorari review leaves in place the Georgia Court of Appeals ruling that the AWP applies to health care corporations (“HCC”) organized under Chapter 20 of the Code. Northeast Georgia Cancer Care, LLC, 315 Ga.App. 521. The Georgia Court of Appeals refused, however, to extend the applicability of the AWP to health maintenance organizations or other health insurance companies not organized under Chapter 20 of the Code. Id.

The dispute at the heart of the Northeast case was whether to sustain the Georgia Insurance Commissioner’s (“Commissioner”) administrative ruling, in April 2010, that the AWP applies to both Blue Cross and Blue Shield of Georgia, Inc. (“BCBS”), a HCC, and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc., (“BCBHSMO”), which is organized under O.C.G.A. §§ 33-21-1 et seq. as a Health Maintenance Organization (“HMO”). (BCBHSMO and BCBS are collectively referred to herein as “Blue Cross.”) The Northeast court concluded that the AWP applies to BCBS and its preferred health care provider network, but that the AWP does not apply to BCBHSMO and its HMO health care provider network. Nevertheless, questions remain as to the application of the AWP to BCBS (and other entities organized as HCCs). Clearly, disputes arising from the application of the AWP that involve entities organized as HCCs will need to be presented to the Commissioner in accordance with the dispute resolution statute, O.C.G.A. § 33-20-30. What is unclear, however, is: 1) what procedures, if any, the Department may establish to approve preferred provider organization arrangements, including limitations on the number of health care providers; 2) will other entities (e.g., Provider Sponsored Health Care Companies) organized as a HCC be subject to the AWP; 3) does the AWP require HCCs to contract with provider groups or just individual providers; and 4) is the AWP inconsistent with the federal Patient Protection and Affordable Care Act?
Finally, this is an important case even for entities not named Blue Cross. It may well prove untenable for the AWP to remain in place unless it is expanded to apply to other types of insurers (e.g., not organized as HCCs) that offer preferred provider arrangements. Failing such an expansion, it is likely that an attempt would be made to repeal the AWP legislatively. However, this would face considerable opposition as the AWP matter was largely supported by the health care provider community and the Medical Association of Georgia. Of course, entities organized as HCCs, i.e., BCBS, can always convert to a traditional health insurance company to avoid being subject to the AWP.

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