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Progressive Policy Tricks Consumers With Medicare, Suit Says

By **Margaret Harding**

Law360, New York (March 19, 2015, 1:26 PM ET) -- Progressive Casualty Insurance Co. has tricked customers into submitting millions of false claims to the government by enrolling them in policies that make Medicare and Medicaid the primary payers of medical claims, according to a False Claims Act complaint unsealed this week in New Jersey.

Relator Elizabeth Negron, a Medicare beneficiary, said Progressive automatically enrolled her in the "health first option," in which medical claims stemming from a car accident would first be paid by her health insurance provider. Under federal law, a private insurance carrier, not Medicare or Medicaid, should be the primary payer of medical claims, the complaint said.

When Negron was hurt in a crash in Philadelphia in 2010, Progressive denied related medical claims from her health care providers and directed them to first submit the claims to Medicare, the complaint said.

"Defendants have saved billions of dollars by leading health care providers to think that they are secondarily liable for medical expenses," the complaint said. "Defendants have caused the Medicare Trust Fund to lose billions of dollars by misleading health care providers."

According to Negron's complaint, when prospective customers attempt to buy car insurance online from Progressive, they are asked if they already have health insurance. If so, they are recommended for a health first policy option in which the health insurance carrier would pay medical claims before Progressive would, the complaint said.

Only if the applicant clicks a question mark on the web page that outlines the policy coverages does Progressive ask whether or not the applicant uses Medicare or Medicaid, the complaint said.

"Defendants could stop health care providers from submitting false and fraudulent claims under these circumstances by simply inquiring into an insured's Medicare status during the application process or before instructing health care providers to submit their claims to the health insurance carrier," the complaint said. "Given the scale of the defendants' fraud, and the ease at which it could be prevented, defendants are purposefully deriving great economic benefit at the cost of taxpayers."

The New Jersey Legislature enacted the health first option for auto insurance in 1990, and the complaint alleges that since then, Progressive has been illegally enrolling Medicare beneficiaries into policies where the health insurance carrier is the primary payer of medical claims.

In Negrón's case, she said she received treatment from Diagnostic Imaging Inc., Oxford Health Care PC and two other providers. Progressive denied the medical bills because Negrón was a health-first policyholder, and sent letters to the providers instructing them to submit the bills to the health insurance carrier.

Medicare subsequently paid bills from Diagnostic, the complaint said. Oxford told Progressive it is not an approved Medicare provider, and Progressive subsequently paid some of the bills, the complaint said.

"Defendants knew their denial letter and actions were causing relator's health care providers to submit bills to Medicare even though the [personal injury protection] benefits had not exhausted," the complaint said.

Negrón said in the complaint that her experience is indicative of how Progressive handles millions of similar bills from health care providers for Medicare beneficiaries. The U.S. declined to intervene in the case.

"Defendants systematically deny these claims as the purported secondary payer," the complaint said. "Defendants recklessly instruct their policyholders and their health care providers to submit their claims to the policyholders' health insurance carrier — Medicare."

A representative from Progressive did not immediately respond to a request for comment.

Negrón is represented by Jeremy Abay of Sacks Weston Petrelli Diamond & Millstein.

The government is represented by Anthony J. LaBruna Jr. of the U.S. Attorney's Office.

Counsel information for the defendants was not immediately available.

The case is Negrón v. Progressive Casualty Insurance Co. et al., case number 1:14-cv-00577, in the U.S. District Court for the District of New Jersey.

--Editing by John Quinn.

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