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Denial of Health Insurance Premium Assistance to Legal Aliens Violates Equal Protection Provision of Massachusetts Constitution

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of Insurance that the O.C.G.A. § 33-20-16, the any willing provider statute (“AWP”), applied to the Preferred Provider Arrangement and Health Maintenance Organization networks of Blue Cross and Blue Shield of Georgia, Inc. (“BCBSGA”) and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc (“BCBSHP”). The Georgia Court of Appeals ruled that the AWP statute applied to BCBSGA because that entity was a Health Care Corporation formed pursuant to O.C.G.A. §§ 33-20-1 et seq. and that the Preferred Provider Arrangement network of BCBSGA was subject to the application of AWP. The Court ruled that the AWP did not apply to BCBSHP because it was formed as an Health Maintenance Organization and not as a health care corporation. Brian T. Casey -- Locke Lord, LLP, (404) 870-4638, bcasey@lockelord.com and Trey Sivley -- Locke Lord, LLP, (404) 870-4657, tsivley@lockelord.com

**Speedway Motorsports, Inc. v. Pinnacle Bank**, A11A2350, A11A2351, A11A2352, Georgia Court of Appeals (March 29, 2012)

On March 22, 2012, the Georgia Court of Appeals affirmed the dismissal of the claim Speedway Motorsports, Inc. (“Speedway”) to the life insurance proceeds of a life insurance policy that was purchased by a former Speedway consultant, allegedly with money embezzled from Speedway by the consultant. The consultant was the owner and the insured under the life insurance policy. After the consultant died, Speedway sought to recover the proceeds of the death benefit by asserting an unjust enrichment claim against the beneficiaries of the consultant’s life insurance policy. The Court determined that Speedway was a creditor as defined in O.C.G.A. § 33-25-11(a), and that the statutory exemption of death benefits from the claims of creditors applied to Speedway. Brian T. Casey -- Locke Lord, LLP, (404) 870-4638, bcasey@lockelord.com and Trey Sivley -- Locke Lord, LLP, (404) 870-4657, tsivley@lockelord.com

**MARYLAND**

**Maryland Health Benefit Exchange Act of 2012**

The Maryland Health Benefit Exchange Act of 2012 was passed during the 2012 regular legislative session. The legislation sets forth the framework for Maryland’s Health Benefit Exchange as the state moves forward in an aggressive manner to implement federal healthcare reform. Maryland is proceeding with its implementation of new law despite the challenges being considered by the Supreme Court.

Policymakers and government officials will continue to move rapidly toward full implementation throughout the interim and on. Time will tell what impact the Supreme Court ruling will have on Maryland’s activities. Brett S. Liningner -- Semmes, Bowen & Semmes, (410) 576-4815, blininger@semmes.com

**MASSACHUSETTS**

**Denial of Health Insurance Premium Assistance to Legal Aliens Violates Equal Protection Provision of Massachusetts Constitution**

In 2006, the Massachusetts legislature created Commonwealth Care, a health insurance premium assistance program for low-income residents, including lawfully-residing aliens. Commonwealth Care is supported by both state and federal funds. Federal funding is provided via a Medicaid demonstration project pursuant to 42 U.S.C. §1315, so that Commonwealth Care is partially reimbursed by the federal government for payments made on behalf of individuals eligible for Medicaid. Legal aliens who have resided in the United States less than five years are ineligible for federal benefits, such as Medicaid, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 8 U.S.C. §1613(a). In other words, the Commonwealth of Massachusetts assumes responsibility for 100% of the premium assistance provided to legal aliens who do not meet PRWORA’s eligibility requirements.


In Finch v. Commonwealth Health Insurance Connector Authority, 461 Mass. 232, 959 N.E.2d 970 (2012), a group of lawful resident aliens filed a class action challenging the legislative appropriations which excluded them from participating in Commonwealth Care. Fifteen organizations filed amicus briefs in the case. The Massachusetts Supreme Judicial Court ruled that the legislation discriminated on the basis of alienage and national origin and was therefore subject to strict scrutiny review. The Court noted that “fiscal considerations
alone cannot justify a state’s invidious discrimination against aliens”, citing *Graham v. Richardson*, 403 U.S. 365, 374 (1971). The Court then conducted a thorough review of the appropriation, its legislative history and its statutory scheme, and concluded that the sole purpose of the legislation was to cut costs, rather than to further national immigration policies. The Court found that the legislative history did not demonstrate any consideration of nondiscriminatory alternatives and thus was not narrowly tailored to meet a compelling state interest. In concluding that the legislation violated the plaintiffs’ rights to equal protection under the Massachusetts Constitution, the Court recognized the significant financial burden imposed by its decision, but went on to state that “minorities rely on the independence of the courts to secure their constitutional rights against incursions of the majority, operating through political branches of government . . . if the plaintiffs’ right to equal protection of the laws has been violated. . .then it is our duty to say so.” Karen Breda, Legal Information Librarian and Lecturer -- Boston College Law School, (617) 552-4407, karen.breda@bc.edu

**MISSISSIPPI**

**Uniform Mitigation Standards and Premium Discounts for Homeowners**

During the 2012 Regular Session, the Mississippi Legislature passed House Bill No. 1410 which establishes uniform mitigation standards for homeowners insurance discounts in five of Mississippi’s coastal counties. Not later than July 1, 2013, insurers shall provide premium discounts or rate reductions based on actuarially justified rating plans for homeowners who build, rebuild or retrofit an insurable property to better resist hurricane or other catastrophic windstorm events. Robert B. House – *Jones Walker*, (601) 949-4830, rhouse@joneswalker.com and David L. Martin – *Jones Walker*, (601) 949-4901, davidmartin@joneswalker.com

**Surplus Lines Fees and Premium Taxes**

During the 2012 Regular Session, the Mississippi Legislature passed Senate Bill No. 2631 which reduces from 5% to 3% the nonadmitted policy fee paid to the Mississippi Windstorm Underwriting Association. The reduced policy fee applies to nonadmitted policies with effective dates on and after July 1, 2012. Also, Mississippi Commissioner of Insurance Mike Chaney issued Bulletin 2012-3 notifying carriers that Mississippi was withdrawing from the Nonadmitted Insurance Multi-State Agreement (NIMA) and that as a result Mississippi will continue to follow the “home state rule” reporting and taxation requirements set forth in the Nonadmitted and Reinsurance Reform Act (NRRA). Robert B. House – *Jones Walker*, (601) 949-4830, rhouse@joneswalker.com and David L. Martin – *Jones Walker*, (601) 949-4901, davidmartin@joneswalker.com

**Online Verification of Automobile Liability Insurance Coverage**

During the 2012 Regular Session, the Mississippi Legislature passed Senate Bill No. 2631 which requires the Mississippi Department of Public Safety, in cooperation with the Commissioner of Insurance and the Department of Revenue, to establish a database to allow law enforcement officers to instantly check a driver’s insurance status and requires proof of automobile liability insurance before receiving a motor vehicle license tag. The target date for this system to be installed and operational is July 1, 2013. Robert B. House – *Jones Walker*, (601) 949-4830, rhouse@joneswalker.com and David L. Martin – *Jones Walker*, (601) 949-4901, davidmartin@joneswalker.com

**Workers’ Compensation Reform**

During the 2012 Regular Session, the Mississippi Legislature passed Senate Bill No. 2576 which makes major revisions to Mississippi’s workers’ compensation laws. The revisions include:

- Return to the original legislative intent that the law be fairly and impartially construed and applied, and overturns the case law to the contrary.
- Supporting medical records must be presented within 60 days after filing a petition to controvert a claim.
- Preexisting conditions do not have to be work-related for apportionment to apply.
- Strengthens measures against workplace drug and alcohol use and the admissibility of post-accident test results.
- Attorney may not recover fees based on benefits voluntarily paid to an injured employee.
- Significantly increases certain benefits related to death and disfigurement.

The new law will take effect and apply to injuries occurring on or after July 1, 2012.

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