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LETTER MEMORANDUM

This Letter Memorandum is submitted as a supplement to Defendant's Brief in support of Motion for Summary Judgment which was previously submitted in this matter and which is again annexed hereto as Exhibit No. I.

A brief review of the procedural history in this case is as follows. This is a suit by Plaintiff as assignee of South Amboy Memorial Hospital to recover a bill for medical services rendered to the Defendant who was a recipient of Medicaid at the time services were rendered.

On January 6, 1995, Defendant filed a Motion for Summary Judgment on the basis that N.J.S.A. 30:4D-6(c) requires medical providers to Medicaid recipients to accept as payment in full the amounts paid by the Medicaid Agency. That statute further prohibits medical providers from billing or attempting to collect any amount from the Medicaid recipient for services provided. It is the Defendant's position in this case that Plaintiff's action is in clear violation of the above-noted statute and should therefore be dismissed as a matter of law.

Plaintiff responded to Defendant's Summary Judgment Motion claiming that the statute cited above allows a medical provider to seek reimbursement from a Medicaid recipient for ". . .

. services, goods or supplies **not authorized** by this act, if the recipient elected to receive the services, goods or supplies **with the knowledge that they were not authorized.**" (Exhibit No.2). **Based on that part of the statute, Plaintiff requested the opportunity to " . . . request the production of any documents regarding Medicaid that was in possession of Defendant prior to the time of her surgery which would advise us to what were her rights, duties and obligations as a Medicaid recipient."** (Exhibit No.2).

An Order was entered by the Court on February 21, 1995, denying Defendant's request for Summary Judgment and allowing seven (7) days to conduct discovery. (Exhibit No.3). That Order was amended by Judge Wolfson to extend the discovery period to sixty (60) days. (Exhibit No.4).

Plaintiff then propounded interrogatories on the Defendant and asked her two questions:

1. Prior to the **medical services at issue, rendered on June 14, 1991, were you aware of the need of a second opinion regarding the medical services?**

Her answer was "No." (Exhibit No.5).

2. **Have you, at any time, received information from any source regarding your rights, responsibility and obligations as a Medicaid recipient?**

Her answer was "No." (Exhibit No.5).

Defendant served **interrogatories on the Plaintiff and their** Answers are **annexed hereto** in support of **Defendant's claim that there** is no genuine issue as to any material fact in this matter.

The following interrogatories and their answers are relevant to this inquiry.

Interrogatory no. 2. Is it your position that payment for services provided by the Plaintiff to the Defendant was not authorized by Medicaid prior to the provision of those services.

Answer: **The clerical and managerial staff in charge at the time of services are no longer employed at this hospital . . .**

The remainder of the Answer to Defendant's interrogatory no. 2 is inadmissible hearsay.

However, the **quoted answer above** clearly indicates that Plaintiff has no witness to support their position. The **absence of** any witnesses or **evidence** to support their claim is further evidenced by **Plaintiff's** answers to interrogatories **4(b)** "the clerical staff is **no** longer available"

Defendant's interrogatory no.5 asks:

Is it your position that Medicaid required a **second** opinion prior to the provision of services to the Defendant in this case? If yes: (c) attach copies of all written documents which support your position.

Answer: None known at present - investigation continues.

A similar answer was given to interrogatory no.6(c). Perhaps more telling of the absence of any claim **by** the Plaintiff in this matter is in its **answer** to request for admissions no. 3:

Admit or deny. **Plaintiff** notified **Defendant** that a second opinion was required prior to **the** provision of services in this matter in **order** for Medicaid to provide coverage.

Answer: Defendant can **neither** admit **no deny** this request. **The** clerical staff **at the** time of patient's admission is no longer employed with the hospital.


Defendant is again submitting this matter for Summary Judgment. Plaintiff was given ample opportunity by the Court to **conduct** discovery **on** the issue of **whether** the services provided were **not** authorized by Medicaid and, more importantly, that Defendant was aware that these services were not authorized. The attached interrogatory answers clearly indicate that the Defendant was **not** aware of any such **requirement** and was not **made** aware of any such requirement. Furthermore, as her **Certification** indicates, the surgery performed in this matter was done on an emergent basis and the obtaining of a second **opinion**, if required, was clearly impossible. It is therefore respectfully submitted **that** Plaintiff's claim in this matter is in violation of N.J.S.A. **30:4D-6(c)** in **that** it constitutes an inappropriate billing of a Medicaid

patient for services rendered. It should be noted that dismissal of Plaintiff's Complaint will not leave Plaintiff without a remedy. As the cases cited in Defendant's Brief made clear, a medical provider's avenue of recourse against a dispute with payment of a Medicaid bill is against the State Medicaid Agency and not the Medicaid recipient.

In conclusion, it is respectfully submitted that Defendant's Motion for Summary Judgment should be granted and Plaintiff's Complaint should be dismissed.

MIDDLESEX COUNTY LEGAL SERVICES CORPORATION

DATED: 10/14/95



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