# Medical Providers Not Required to Pursue Administrative Remedies Prior to Filing Suit

06.06.2023

## PRACTICE AREAS

Appeals

Insurance Defense

Litigation

In a recent decision, the Court of Appeals explained the requirements for seeking administrative remedies in the No-Fault arena.

According to *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, ___ Mich App ___; ___ NW2d ___ (2023), a provider is not required to exhaust their administrative remedies through the Department of Insurance and Financial Services (DIFS) before initiating a lawsuit in court.

The 2019 amendments to the No-Fault Act created a utilization review (UR) process under MCL 500.3157a. This UR process is an insurer's initial evaluation of whether the level and quality of treatment provided to an insured is appropriate. MCL 500.3157a(6). Providers who are dissatisfied with an insurer's UR decision can file an administrative appeal with DIFS. MCL 500.3157a(3)(b)(iii) and (5). Then if a party is dissatisfied with the DIFS decision, they can appeal to the Circuit Court. Mich Admin Code, R 500.65(7).

Since the amendment's enactment, insurers were able to defend against no-fault provider suits by filing motions for summary disposition arguing that the provider failed to exhaust their administrative remedies because they did not appeal the insurer's UR decision to DIFS before initiating a lawsuit in court. Now, the Michigan Court of Appeals has foreclosed that argument.

In *True Care*, the Court of Appeals held that MCL 500.3157a and Mich Admin Code, R 500.65 do not require providers to file an administrative appeal. Instead, the administrative appeal process is optional, and providers may choose to bring a "direct independent cause of action [as] provided in MCL 500.3112." *True Care*, ___ Mich App at ___; slip op at 3. The Court noted that the relevant administrative rules, enacted by DIFS, use permissive rather than mandatory language—"[a]n insurer's or the association's denial of a provider's bill on the basis that the provider overutilized or otherwise rendered or ordered inappropriate treatment . . . is a determination from which a provider *may* appeal to the department under R 500.65." Mich Admin Code, R 500.64(3) (emphasis added). Thus, the Court of Appeals determined that the Michigan Legislature intended for there to be

multiple pathways for determining the appropriateness of medical treatment under the No-Fault Act. Said another way, appealing an insurer's UR decision to DIFS is not required before initiating a lawsuit in court.

The practical effect of *True Care* is that insurers will no longer be able to challenge a provider's claims against them on the basis of failure to exhaust administrative remedies due to the provider's failure to appeal a UR decision to DIFS before initiating a lawsuit in court.

*We are here to help you navigate this change in law. Please contact your Novara lawyer with any issues or questions.*