THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

In Re Petition of Margaret McCarthy

INS 13-038-AP

NHID's Motion *in Limine* to Limit Evidence

The New Hampshire Insurance Department ("NHID"), by and through its Staff Advocate, Richard P. McCaffrey, moves to limit the evidence Petitioner Margaret McCarthy ("Petitioner") may introduce at the adjudicative hearing to evidence relevant to establishing she was directly and individually injured as a result of the NHID's recommendation that the federal Center for Consumer Information and Insurance Oversight ("CCIIO") certify Anthem Blue Cross Blue Shield's Pathway Network for use in connection with the Health Insurance Marketplace ("Marketplace"). In support of this Motion, the NHID states as follow:

1. On March 28, 2014, the NHID dismissed Frisbie Memorial Hospital's request for an adjudicative hearing, but determined that the Petitioner had sustained "a sufficiently direct injury to confer standing under RSA 400-A:17, II(b)." Order at 5.

2. The March 28th Order further explained that "Petitioner McCarthy has standing . . . as a consumer who claims to have been harmed by the circumstance that there is only one Marketplace provider and that this provider has an inadequate network which can only be made adequate by the inclusion of Frisbie." Order at 5.

3. Accordingly, the Petitioner's entitlement to an adjudicative hearing is predicated on the "direct injury" she allegedly sustained as an individual consumer.

4. Ins 203.01(d)(4) provides, in pertinent part, that the hearing officer shall "[r]eceive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence."

5. In the present case, the issue before the Hearing Officer is the adequacy of Anthem's Pathway Network as it relates to the Petitioner. Consequently, evidence that the Pathway Network may be inadequate with respect to any unnamed, non-party consumers or medical providers is irrelevant and must be excluded.[1]

Wherefore, the NHID requests that the Hearing Officer:

A. Grant this Motion;

B. Limit the evidence received at the hearing to evidence relevant to the adequacy of the Pathway Network as it relates to the Petitioner; and

C. Exclude any evidence the Pathway Network may be inadequate with respect to any unnamed, non-party consumers.

Respectfully submitted,

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[1] The NHID's Order of March 28, 2014 determined that Frisbie Memorial Hospital lacked standing. Accordingly, Frisbie's claims were effectively dismissed, leaving only the Petitioner's claims. Order at 4. It is self-evident, therefore, that any evidence of the adequacy of the Pathway Network as it relates to Frisbie is irrelevant and must be excluded.

Certificate of Service

A copy of the foregoing Motion *in Limine* has been transmitted this date via email to Jeremy Eggleton, counsel for the Petitioner, and Michael Dunham, counsel for the Intervenor.

Date: 5/6/2014

Richard P. McCaffrey