IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MISSISSIPPI ASSOCIATION OF HEALTH PLANS, INC. PLAINTIFF

VS. Civil Action No. 3:24-cv-379-HTW-LGI

MIKE CHANEY, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF INSURANCE OF MISSISSIPPI DEFENDANT

REPLY IN SUPPORT OF DEFENDANT COMMISSIONER CHANEY'S MOTION TO DISMISS

Mike Chaney, in his official capacity as the Commissioner of Insurance for the State of Mississippi ("Commissioner Chaney"), files this Reply to the Response in Opposition filed by MAHP. Dkt. 22.

1. Despite MAHP's claims, there are only two parties with direct interests in H.B. 1489 – MAHP's health insurance members and Mississippi's ambulance providers. H.B. 1489's reimbursement and coverage mandates regulate the commercial transactions between these private parties, to which the neither the State of Mississippi nor Commissioner Chaney is a participant/beneficiary. And because no ambulance service provider "[has] filed suit to demand coverage or reimbursement compelled by House Bill 1489." [Dkt 22 at p. 1-2], this matter is not ripe.

2. H.B. 1489's mandates are straightforward and self-actuating. MAHP contorts the statute's language, suggesting that the real dispute is between its members and Commissioner Chaney. MAHP argues that Commissioner Chaney's

"statutory authority as the regulator of insurance companies in Mississippi requires him to ensure compliance with House Bill 1489." Dkt. 22 at p. 2. From this general proposition, MAHP concludes that H.B. 1489 does not become law until Commissioner Chaney says so and until then, MAHP members are legally authorized to shrug off any new laws not so endorsed. *See* Dkt. 22 at p. 2-3. MAHP's arguments are unsubstantiated in both law and fact.

3. Under Mississippi law, "if the provisions of an insurance policy conflict with the statute, the statutory provisions prevail and are *incorporated into the policy*." *Dunnam v. State Farm Mut. Auto. Ins. Co.*, 366 So. 2d 668, 670 (Miss. 1979) (overruled on other grounds) (emphasis added). That is, H.B. 1489, in the form of two manageable *mandates*, applies to all health insurance policies, regardless of whether health insurers include the mandates in future policies and regardless of any edict from Commissioner Chaney.[1]

4. Even if this Court views this case as a dispute between MAHP members and Commissioner Chaney, this case is not ripe for consideration as there is no current controversy that can be resolved. Commissioner Chaney has not issued a bulletin or proposed a regulation regarding H.B. 1489's mandates. Nor has he issued a cease-and-desist letter to MAHP members. Nor has he denied MAHP members' rate increases for either misapplying the law. Nor has he fined any MAHP member for snubbing H.B. 1489. Nor has he approached the Mississippi Attorney General about

[1] Though the case law is clear and all statutes proscribing mandatory insurance coverage will be incorporated into any insurance policy, there is also statutory support for insurance mandates being read into non-compliant policies. *See e.g.,* Miss. Code Ann. § 83-9-5 (West).

seeking a TRO against a MAHP member to compel compliance with the law. Commissioner Chaney has taken no action regarding H.B. 1489, and nothing suggests that he will.

5. MAHP simply misrepresents the process for new policy provisions, implying that when a new policy provision is submitted, its members *immediately* would be hit with a cease-and-desist letter for their failure to incorporate the new mandates. Per statute, once the Commissioner receives complaints (from either an insured or ambulance providers), then and only then, would the Commissioner initiate a multi-step administrative process through which the carrier would be given: notice and opportunity to respond following an examination. Then the carrier would get a proposed finding from MID and another opportunity to respond in writing. Then, there would be an opportunity for a *hearing* before MID, before a Final Order from MID. Then, the carrier would have the right to *appeal* MID's decision to the Circuit Court of Hinds County. *See generally* Miss. Code Ann. § 83-9-4 (West).[2]

6. None of this has occurred, nor is there any reason to believe it will occur, unless MAHP members intend to turn their backs on the new law and act in bad faith. Until there is some act taken by the Commissioner, or at the very least an

[2] *See e.g.,* https://www.mid.ms.gov/wp-content/uploads/2023/04/BCBSMS-22.pdf (Targeted Market Exam of BCBSMS re: telemedicine coverage and reimbursement mandates in Miss. Code Ann. § 83-9-353, and § 83-9-355 (West)) (last visited August 26, 2024). This enforcement action against BCBSMS for failure to follow the coverage and reimbursement mandates of the telemedicine law is both illustrative (as to the process) and cautionary (as to the lengths MAHP members will go to distort the Mississippi legislature's insurance mandates to the detriment of their insureds and providers).

indication that he intends to take some action to "enforce" H.B. 1489, *this action is not ripe for resolution.* There is no dispute to resolve.[3]

7. On the merits, MAHP's Contract Clause claim fails.[4] MAHP bears the burden of showing that there has been a substantial interference with existing contracts and, assuming substantial interference, that the law does not serve a valid public purpose or that it is unreasonable. *See Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 10 F.4th 905, 913 (9th Cir. 2021). MAHP's Complaint provides nothing in this regard, only alleging that the reimbursement mandate affects those contracts that were in place on July 1, 2024, and "unilaterally expand[s] the obligations (and costs) of both Plaintiff's members and their subscribers/insureds under existing health benefit plans and insurance policies without their consent." Dkt. 1 at p. 10. MAHP has offered nothing more than general allegations made behind the veil of an association—a majority of whose members do not have any interest in this litigation.[5] MAHP has not identified one contract or a one invoice that has been

[3] For this same reason, MAHP has failed the first requirement of standing – injury in fact – that requires the "threatened" injury to be certainly impending. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 133 S. Ct. 1138, 1147, 185 L. Ed. 2d 264 (2013).

[4] MAHP relies on the case of *United Healthcare Ins. Co. v. Davis*, to claim that a Contract Clause violation occurs when a state law causes a health insurer to incur unanticipated administrative costs. Dkt. 22 at pp. 27-28. *Davis* is distinguishable as the state (Louisiana) was the contracting party whereas here, H.B. 1489 only regulates private insurance carriers and private ambulance providers. Where the state is not a contracting party, "[a]s is customary in reviewing economic and social regulation [,] ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Rsrvs. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 412–13, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

[5] MAHP's claim is premised on idea that ambulance service providers will undoubtedly submit invoices *"in any amount"* and because of H.B. 1489, the insurance company will be forced to pay it regardless of amount. This is neither factually, nor legally the case and MAHP's whole claim here relies upon this Court accepting MAHP's absurd interpretation of the reimbursement mandate, contrary to law. "No construction is ever to be adopted which charges the legislature with absurdity, when any other reasonable view can be taken." *In re B.A.H.*, 225 So. 3d 1220, 1237 (Miss. Ct. App.

substantially impaired because of the reimbursement mandate. Nor have they pled that H.B. 1489 violates a "significant and legitimate public purpose behind the regulation." *Energy Reserves Group, Inc.*, 459 U.S. at 411 (citation omitted).

8. Likewise, on the merits, MAHP's claim that the coverage mandate is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment fails. And though a Motion to Dismiss gives deference to the allegations in MAHP's Complaint, those allegations are patently unreasonable – allegations that claim that "911 call" could mean something other than calling "911" or the term encounter could mean anything other than industry terms common to the both the ambulance and insurance companies, as expressed by applicable CPT codes. As noted in Commissioner Chaney's response to the Plaintiff's preliminary injunction motion, at least two states, Arkansas and West Virginia, have used the *exact* definition for "alternative destination" without issue or constitutional challenge. It is illogical that MAHP's members struggle where similarly situated (and named) insurance companies have not. *See* Dkt. 19-4. (BCBS of Arkansas letter to ambulance provider re: billing instructions applicable to treatment in place and transport to an alternative destination law).

DATE: AUGUST 26, 2024.

Respectfully submitted,

2016) citing *Seal v. Andrews*, 214 Miss. 215, 227, 58 So. 2d 504, 507 (1952). Thus, when a statute is "subject to multiple interpretations," the courts will, if possible, avoid "interpret[ing] the statute in such a way as to cause absurd results." *Id.* at 1237 citing *Dawson v. Townsend & Sons, Inc.*, 735 So. 2d 1131, 1140 (Miss. Ct. App. 1999) (citation omitted.)

MIKE CHANEY, in his official capacity as Commissioner of Insurance of Mississippi, DEFENDANT

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system, which shall provide notice thereof to all counsel of record.

This the 26th day of August, 2024.

/s/ James H. Hall