

**STATE OF MICHIGAN**  
**DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**  
**Before the Director of Insurance and Financial Services**

**In the matter of:**

██████████,

**Petitioner,**

v

**File No. 151238-001**

**UnitedHealthcare Insurance Company,**

**Respondent.**

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**Issued and entered**  
**this 11<sup>th</sup> day of January 2016**  
**by Randall S. Gregg**  
**Special Deputy Director**  
**ORDER**

**I. PROCEDURAL BACKGROUND**

██████████ (Petitioner) was denied coverage for a colonoscopy by her health care insurer, UnitedHealthcare Insurance Company (UHC).

On December 14, 2015, ██████████, MD, the Petitioner's authorized representative, filed a request with the Director of Insurance and Financial Services for an external review of that denial under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On December 21, 2015, after a preliminary review of the information received, the Director accepted the request.

The Petitioner receives group health benefits through a plan underwritten by UHC. The Director immediately notified UHC of the external review request and asked for the information it used to make its final adverse determination. UHC responded on December 22, 2015.

This case presents an issue of contractual interpretation. The Director reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner's health care benefits are described in the *UnitedHealthcare Navigate Certificate of Coverage* (the certificate) and its "Schedule of Benefits."

On August 10, 2015, the Petitioner had a colonoscopy performed by ██████████, MD. The charge for the colonoscopy was \$1,275.00. UHC denied coverage because the procedure was performed without a valid referral from the Petitioner's primary care physician.

The Petitioner appealed UHC's denial through its internal grievance process. At the conclusion of that process UHC affirmed its denial in a final determination dated October 27, 2015.<sup>1</sup> The Petitioner now seeks a review of that final adverse determination from the Director.

### III. ISSUE

Did UHC correctly deny the claim for the Petitioner's colonoscopy?

### IV. ANALYSIS

#### Petitioner's Argument

In an appeal letter to UHC dated September 24, 2015, the Petitioner explained her position:

A recent series of unfortunate events prompted primarily by a defined lack of employee information as to health care billing procedures, coupled with my primary physician, Dr. [REDACTED] [REDACTED] lack of informing United Health Care of mandated personal specialist appointments previous to their occurrence has caused undue hardship, and bills I feel are not my responsibility.

The above physician's services [*i.e. the colonoscopy*] were not submitted to United Health Care for prior approval by [REDACTED] office prior to the actual appointment. This was not my fault in any way; lack of communication should be directed to the primary physician and his staff. Accordingly, I was provided a typical referral slip, with the name and date of each specialist appointment.

Further, the entire situation could have possibly been avoided if myself and other . . . employees would have received timely and updated health insurance information and requirements! An original meeting was scheduled on July 23 to discuss this topic. Unfortunately, that meeting was cancelled due to the wrong enrollee packets being presented. A subsequent meeting was scheduled for August 18. At that meeting, employees were asked to re-file paperwork, including any changes, based on the previous health care provider.

Important to note: In this, or any other meeting, was it was conveyed to me, as an employee, that a primary physician was required to contact United Health Care, previous to the actual set appointment. Further, it's my accurate opinion that the particular primary physician was / is aware of this specific "preapproval" requirement as an enrolled United service provider.

To summarize, there was not any type of information shared to me; as [an] employee, that a primary physician was required to contact United prior to specialist referrals. The above appointment and services rendered was one of four required and scheduled by the primary

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<sup>1</sup> The Petitioner disputes UHC's processing of other claims but she only completed the internal grievance process for the colonoscopy. Therefore, only the colonoscopy claim denial can be reviewed in this Order.

physician as part of an extensive physical. The original physical was undertaken on July 17, 2015.

Consequently, to me the obvious error should fall wholly on the primary physician (and office staff) for not requesting pre-approval for the above cited specialist appointment.

This particular medical billing should not be my responsibility.

██████████, MD, the Petitioner's authorized representative for this review, is also her primary care physician. ██████████ wrote to UHC on the Petitioner's behalf on November 18, 2015:

This is being done on behalf of the [Petitioner] in terms of an appeal, regarding her insurance coverage. [She] is a new patient of ours who we saw for the first time on 05-28-2015 at the behest of her husband, who is also a patient here. Her husband had met me at the laundry mat one day and stated and pleaded to me that his wife had an appointment to see me, but it was quite far out and that she had multiple medical problems that need to be addressed right away. She is not normally a sick person, but he is very concerned and wanted her to be seen as soon as possible. We called her and got her in sooner.

When she came to see me, she had a multitude of complaint's that needed to be addressed right away, creating an urgent situation. . . . The patient had not had any . . . colonoscopies, and had not done any type of preventative health or testing prior to seeing us. This created an urgent situation where these tests needed to be done and they were. The colonoscopy showed a mass in the colon that then created another urgent situation where she needed to be followed up by another specialist in regards to the mass in the colon, and that was taken care of as well.

In summary, [the Petitioner] is a █-year-old new patient who had not been seeing physicians on [a] regular basis, she had not been having her regular type of checkups. She came in with several different complaints, which then found several other health issues. The patient and her husband had been calling several times trying to get the patient in earlier because they felt that her health was poor and needed urgent evaluation. Given this surrounding background, environment, and abnormalities, it created an urgent situation for these issues to be addressed immediately. In summary, these issues included uncontrolled cholesterol, uncontrolled blood pressure, blood in the urine, hoarseness in the voice, chest pain, colorectal mass, feelings of poor health and decline in generalized health, and had not been seen by a physician on a regular basis in quite some time, and not up to date at all on any of the screening test.

In an earlier letter to UHC dated September 4, 2015, ██████████ acknowledged the failure of his office to get approved referrals from UHC:

[The Petitioner] is a new patient to my office as of May 28, 2015. I saw the patient on July 17, 2015 for a complete physical examination at this time I found it medically necessary for her to see a few specialists. . . . She had a colonoscopy with ██████████. . . Unfortunately my office did not request insurance referrals for these visits. Please consider au-

thorizing backdated referrals for this patient, as we were unaware she needed these being a new patient.

### Respondent's Argument

In its final adverse determination UHC told the Petitioner:

We carefully reviewed the documentation submitted, our payment policies and the limitations, exclusions and other terms of your Benefit Plan, including any applicable Riders, Amendments, and Notices. We confirmed, however, that this service(s) is not eligible for payment as you requested. You are responsible for all costs related to this service(s).

Based on our review, according to your Benefit Plan, Payment for these services is denied.

Benefits are only available when you receive a valid referral from your Primary Care Physician (PCP) before receiving the service.

Covered Health Services must be provided by or referred by your Primary Physician. If care from another Network Physician is needed, your Primary Physician will provide you with a referral. The referral must be received before the services are rendered. If you see a Network Physician without a referral from your Primary Physician, Benefits will not be paid. You do not need a referral to see an obstetrician / gynecologist or to receive services through the Mental Health / Substance-Related and Addictive Disorders Designee.

### Director's Review

UHC declined to cover the Petitioner's colonoscopy because she did not have a "valid referral." The term "valid referral" is not defined in the certificate or the "Schedule of Benefits" and the Director finds nothing in either document that would lead to the conclusion that the Petitioner failed to do something that resulted in an invalid referral.

The Petitioner was seen by [REDACTED], her primary care physician, for a physical. [REDACTED] decided she needed to have a colonoscopy<sup>2</sup> and arranged for it to be performed by [REDACTED] a network physician. The "Schedule of Benefits" (p. 2) makes clear that the responsibility for a "valid referral" lies with the primary care physician, not the Petitioner:

Covered Health Services must be provided by or referred by your Primary Physician. If care from another Network Physician is needed, your Primary Physician will provide you with a referral. The referral must be received before the services are rendered. If you see a Network Physician without a referral from your Primary Physician, Benefits will not be paid.

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<sup>2</sup> UHC does not dispute the medical necessity for the colonoscopy.

The Petitioner said, "I was provided a typical referral slip, with the name and date of each specialist appointment." She had no reason to think the referral to [REDACTED] was not valid. Nothing in the certificate or the "Schedule of Benefits" put the Petitioner on notice of any special requirement on her part to make the referral to [REDACTED] "valid."

Furthermore, a referral by a primary care physician to a network physician for a colonoscopy does not require prior authorization. The "Schedule of Benefits" (pp. 2-3) lists services that require prior authorization and a colonoscopy is not on that list; there is also no prior authorization requirement in section 25 of the schedule, "Scopic Procedures – Outpatient Diagnostic and Therapeutic" (p. 13). But even if prior authorization had been required, the certificate (p. 3) says, "In general, Physicians and other health care professionals who participate in a Network are responsible for obtaining prior authorization." [Underlining added]

The Director concludes and finds that UHC wrongly denied coverage for the Petitioner's colonoscopy.

#### V. ORDER

The Director reverses UHC's October 27, 2015, final adverse determination.

UHC shall immediately cover the Petitioner's colonoscopy on August 10, 2015, and shall, within seven days of providing coverage, furnish the Director with proof that it has complied with this Order.

To enforce this Order, the Petitioner may report any complaint regarding compliance to the Department of Insurance and Financial Services, Health Care Appeals Section, at this toll-free number: (877)-999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this order may seek judicial review no later than 60 days from the date of this order in the circuit court for the Michigan county where the covered person resides or in the circuit court of Ingham County.

A copy of the petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of General Counsel, Post Office Box 30220, Lansing, MI 48909-7720.

Patrick M. McPharlin  
Director

For the Director



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Randall S. Gregg  
Special Deputy Director