

NY Appeals Court Issued Decision on Rights of Insurers to Withhold Payments to Improperly Licensed Entities

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Washington, DC—The New York Court of Appeals has issued a critically important—and unanimous—decision concerning the rights of insurers to withhold payments to improperly licensed entities. Resolving a longstanding dispute involving New York medical corporation licensing statutes, the Court of Appeals, in *State Farm Mutual Auto. Ins. Co. v. Mallela*, N.Y., (Slip Op. No. 02416, 3/29/05), held that the insurers had no obligation to pay any claims from improperly licensed entities, regardless of the medical appropriateness of the treatment provided.

The question posed to the Court (as a certified question from the Second Circuit Court of Appeals) was whether "insurance carriers may withhold payment for medical services provided by fraudulently incorporated enterprises to which patients have assigned their claims." The New York Court of Appeals concluded unanimously that insurers may withhold such payments.

The specific situation in this case involved a New York Statute that precluded non-physician medical professionals from sharing ownership in medical service corporations. Where the medical corporations were fraudulently incorporated, to allow the non-physician owners to oversee a corporation providing medical services, the Court held that insurers were not obligated to make any payments to these medical corporations.

This decision (with potential ramifications in states around the country) makes it substantially easier for insurers to investigate and deny claims based on licensing issues, without the need for a claim

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by claim investigation of medical necessity or other claim specific issues. While New York has been a hotbed of activity for these improperly licensed facilities, they arise in states around the country. Insurers around the country - in all lines of insurance - should be reviewing licensing statutes, and evaluating whether these statutes provide—in situations involving fraud schemes where evasion of licensing restrictions is a component of the scheme—a basis for front-end denials of claims, independent of the appropriateness of specific treatment. While the decision leaves some questions unanswered (e.g., is there a cause of action to recover payments previously made, are all licensing statutes the same in this regard, is there a difference between "fraudulently" incorporated enterprises and simple licensing mistakes), insurers should carefully consider how this decision affects their ongoing anti-fraud operations.

[View the opinion.](#)