

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 3rd day of June, 2021.

Present: All the Justices

HealthKeepers, Inc., Appellant,

against Record No. 201106
 Circuit Court No. CL-2019-0010310

Dominion Surgical Specialists, LLC, Appellee.

Upon an appeal from an order rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, for the reasons set forth below, the Court is of opinion that there is error in the ruling that is the subject of this appeal. Therefore, we reverse.

BACKGROUND

Dominion Surgical Specialists, LLC (Dominion) is a Virginia limited liability company that provides medical care services. HealthKeepers, Inc. (HealthKeepers) is a Virginia corporation operating as a health insurance provider.

In 2017, Dominion provided out-of-network emergency medical services to a patient (the Insured) who was covered by medical insurance purchased from HealthKeepers. Dominion filed a claim in the amount of \$249,946.80, with HealthKeepers, for payment of Dominion’s charges for the medical services that Dominion provided to the Insured. When HealthKeepers paid Dominion only \$14,454.19 on the claim, Dominion sought to recover the unpaid balance from HealthKeepers by filing an administrative complaint, regarding the amount of HealthKeepers’ insurance payment, with the Virginia State Corporation Commission (the Commission). After requesting and reviewing HealthKeepers’ response to Dominion’s administrative complaint, the Commission responded that HealthKeepers correctly processed the Insured’s claim pursuant to

the provisions of Code § 38.2-3445,* and had paid the full amount allowed for the Insured's claim, according to the terms of the Insured's HealthKeepers' insurance policy.

Seeking recourse, Dominion filed a complaint against HealthKeepers in the Circuit Court of Fairfax County, claiming entitlement to payment, from HealthKeepers, of the unpaid balance of the amount it had charged for the emergency medical services it provided to HealthKeepers' Insured. Dominion based its claim on three grounds: (1) HealthKeepers' statutory duty under Code § 38.2-3445 to reimburse Dominion for emergency care; (2) quantum meruit; and (3) unjust enrichment.

HealthKeepers responded by filing a demurrer, arguing that Dominion was not entitled to relief because Code § 38.2-3445 did not give Dominion a private right of action to sue HealthKeepers, and that the quantum meruit and unjust enrichment theories were inapplicable because HealthKeepers did not benefit from or request the services rendered to the Insured.

Following a hearing on the demurrer, the circuit court sustained the demurrer as to the quantum meruit and unjust enrichment claims, but overruled the demurrer concerning Dominion's claimed private right of action against HealthKeepers under Code § 38.2-3445. The circuit court concluded that the statute's language "necessarily implies" a private right of action when "it imposes a duty on the health carrier and creates a benefit for the [patient]," because if the health carrier's duty cannot be enforced in a private right of action, then "it is a right without a meaningful remedy." The circuit court memorialized its ruling in an order entered on February 10, 2020.

HealthKeepers filed a motion for reconsideration, reiterating its position that Code § 38.2-3445 does not create a private right of action for a health care provider because the statute designates the Commission as the enforcement authority. HealthKeepers noted, alternatively, that if the statute creates a private right of action, that right is held by the patient, not by the health care provider.

Dominion opposed HealthKeepers' motion, arguing that the Commission's response to Dominion's administrative complaint reflected that the Commission does not have a remedy for

* Dominion relied on Code § 38.2-3445 (2011) in its complaint against HealthKeepers. In 2020, after Dominion filed its complaint, Code § 38.2-3445 (2011) was amended. In this order, all references to Code § 38.2-3445 pertain to Code § 38.2-3445 (2011).

disputes under Code § 38.2-3445. The circuit court denied HealthKeepers' motion for reconsideration.

HealthKeepers filed a motion for certification of an interlocutory appeal, which the circuit court granted. We granted HealthKeepers' assignment of error:

The Circuit Court erred in holding that Virginia Code § 38.2-3445 creates a private right of action allowing an out-of-network health care provider to recover directly from a health carrier for the value of emergency medical services provided to the insured.

ANALYSIS

HealthKeepers argues that the circuit court erred in holding that Code § 38.2-3445 provides a private right of action that allows out-of-network health care providers to recover directly from a health insurance carrier. It asserts that the Code is silent concerning this private right of action. It contends that Code § 38.2-3445 refers to "benefits" owed by the health insurance carrier to the patient, not to the health care provider, and recognizes only a health care provider's remedy against the patient, not against the health insurance carrier. HealthKeepers avers that the circuit court's recognition of a private right of action, under Code § 38.2-3445, contradicts the General Assembly's intent to designate the Commission as the enforcement authority for violations of Code § 38.2-3445.

Dominion responds that the plain language of Code § 38.2-3445 uses the term "benefits" to refer to reimbursements owed to a health care provider, thereby giving rise to the health care provider's right to seek a remedy against a health insurance carrier who fails to comply with this reimbursement scheme. Dominion asserts that absent a private right of action, Code § 38.2-3445 is a "dead letter with no enforcement mechanism," or in other words, a right without a remedy. We agree with HealthKeepers, and disagree with Dominion.

In reviewing a circuit court's decision to sustain a demurrer, we review all conclusions of law de novo. *Michael Fernandez, D.D.S., Ltd. v. Commissioner of Highways*, 298 Va. 616, 617–18 (2020). To the extent that this case involves an issue of statutory interpretation, we review such issues de novo because they concern pure questions of law. *JSR Mech., Inc. v. Aireco Supply, Inc.*, 291 Va. 377, 383 (2016).

Substantive law, which includes the Constitution of Virginia, laws enacted by the General Assembly, and historic common-law principles recognized by the courts, determines whether a claimant has a right to bring a judicial action. *Michael Fernandez, D.D.S.*, 298 Va. at 618. "A

right of action is a legally recognized remedial right to enforce a cause of action.” *Cherrie v. Virginia Health Servs., Inc.*, 292 Va. 309, 314 (2016) (citation, internal quotation marks, and emphases omitted).

When a statute expressly authorizes a private right of action, then there is no doubt that the right exists. *Id.* at 315. When a statute is silent, a court has no authority to infer a private right of action, unless there is “demonstrable evidence that the statutory scheme necessarily implies it.” *Id.*; see also *Michael Fernandez, D.D.S.*, 298 Va. at 618. In no case does this Court infer a private right of action “when the General Assembly expressly provides for a different method of judicial enforcement.” *Michael Fernandez, D.D.S.*, 298 Va. at 618 (citation and internal quotation marks omitted).

The pertinent statute in this case is Code § 38.2-3445(4), which governs medical insurance covering a patient’s access to emergency services; it provides:

If such services are provided out-of-network, any cost-sharing requirement expressed as copayment amount or coinsurance rate cannot exceed the cost-sharing requirement that would apply if such services were provided in-network. However, an individual may be required to pay the excess of the amount the out-of-network provider charges over the amount the health carrier is required to pay under this section. The health carrier complies with this requirement if the health carrier provides benefits with respect to an emergency service in an amount equal to the greatest of (i) the amount negotiated with in-network providers for the emergency service, or if more than one amount is negotiated, the median of these amounts; (ii) the amount for the emergency service calculated using the same method the health carrier generally uses to determine payments for out-of-network services, such as the usual, customary, and reasonable amount; and (iii) the amount that would be paid under Medicare for the emergency service.

Code § 38.2-3445 does not expressly provide for a private right of action for health care providers against the insurance companies that insure their patients. Code § 38.2-3445(4) concerns “benefits” provided by an insurance company “with respect to an emergency service.” The term “benefits” is defined as “those health care services *to which an individual is entitled* under the terms of a health benefit plan.” Code § 38.2-3438 (emphasis added). As such, the benefits of an insurance plan offered by an insurance company are enjoyed by the insurance company’s insured, who is the patient of a health care provider. Thus, not only is the statute silent concerning whether it creates a private right of action, but any right of action that it might create, would seem to belong to the patient rather than to the patient’s health care provider.

Additionally, a review of relevant statutory language reveals no “demonstrable evidence that the statutory scheme necessarily implies” a private right of action under Code § 38.2-3445(4). Further, we have previously held that a private right of action is not implied when the General Assembly expressly provides an administrative procedural remedy, and in this instance the General Assembly gave the Commission authority to determine if it reasonably believes there has been a violation of any of the laws under Code Title 38.2. *See* Code §§ 38.2-200(A) and -219(A); *see also Michael Fernandez, D.D.S.*, 298 Va. at 619 (reasoning that the General Assembly’s express provision for an administrative procedure suggested that “the General Assembly intended to exclude a private right of action”); *Cherrie*, 292 Va. at 316–17 (refusing to infer the implication of a private right of action when the statutory scheme provided multiple methods of enforcing private rights through procedures overseen by the Board of Health).

The Commission has the authority to issue any rules and regulations necessary for the administration and enforcement of Title 38.2. Code § 38.2-223. Any dissatisfaction with the Commission’s resolution of an issue can be appealed pursuant to Code § 38.2-222. Thus, no private right of action can be inferred to exist pursuant to Code § 38.2-3445(4).

Dominion wrongly claims that if a private right of action against HealthKeepers is not inferred, Dominion does not have a remedy under Code § 38.2-3445(4). However, Code § 38.2-3445(4) states that a health care provider has recourse against the patient if the health care provider does not receive full payment for its services. Code § 38.2-3445(4) allows Dominion to pursue a claim for payment against its patient because the Code provides that “an individual may be required to pay the excess of the amount the out-of-network provider charges over the amount the health carrier is required to pay.” Further, under Code § 38.2-222, Dominion could have appealed the Commission’s resolution of its claim.

CONCLUSION

The circuit court erred when it held that Code § 38.2-3445(4) creates a private right of action allowing an out-of-network health care provider to recover directly from a health insurance carrier, because the express language of the statute does not provide for such a private right of action. The statute is silent concerning a private right of action and there is no demonstrable evidence that the statutory scheme necessarily implies that one should be created.

Also, the General Assembly gave the Commission authority to determine and address any violations of Code § 38.2-3445(4).

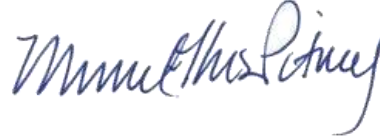
Accordingly, we conclude that Dominion does not have a private right of action under Code § 38.2-3445(4); we reverse the ruling of the Circuit Court of Fairfax County, and remand this case to the circuit court for further proceedings consistent with this order.

This order shall be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

Douglas B. Robelen, Clerk

A handwritten signature in blue ink, appearing to read "Douglas B. Robelen".

By:

Deputy Clerk