IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

USAA GENERAL INDEMNITY COMPANY,

Appellant,
vs.

FLORIDA HOSPITAL MEDICAL CENTER
a/a/o Raymond Rivera,

Appellee.
_____/

APPELLATE CASE NO: 2017-CV-000118-A-O
LOWER COURT CASE NO: 2014-SC-007209-O

Appeal from the County Court,
for Orange County, Florida,
Eric H. DuBois, County Judge.

Douglas H. Stein, Esq.
Association Law Group, P.L.
Attorney for Appellant

Robert J. Hauser, Esq.
Pankauski Hauser, PLLC.
Attorney for Appellee

Before JORDAN, MARQUES, CRANER, JJ.

PER CURIAM.

Appellant, USAA General Indemnity Company ("USAA"), seeks review of the final summary judgment entered against it. We have jurisdiction and dispense with oral argument. *See* § 26.012(1), Fla. Stat. (2018); Fla. R. App. P. 9.030(c)(1)(A).

This appeal concerns the proper methodology to determine the application of the deductible authorized under section 627.739(2), Florida Statutes (2018), when personal injury protection ("PIP") benefits are sought by an insured. The final summary judgment Order we review provides that, when calculating the amount of PIP benefits due to the insured, section 627.739(2) requires the deductible to be subtracted from the total medical care charges before applying the statutory

reimbursement limitations provided in section 627.736(5)(a)1.b., Florida Statutes (2018). Appellee, Florida Hospital Medical Center a/a/o Raymond Rivera ("Florida Hospital"), contends that the trial court applied the correct law in utilizing this methodology. USAA argues that the statutory limitations must be applied first and the deductible subtracted from that amount. The unambiguous language in section 627.739(2), as well as binding Fifth District Court of Appeal case law, support Florida Hospital's interpretation of the law. Accordingly, we affirm.

BACKGROUND

The parties do not dispute the pertinent facts. In 2014, Florida Hospital provided medical services to Raymond Rivera due to injuries he sustained in a motor vehicle accident. The services provided were emergency services and care. Mr. Ramirez was insured by a policy issued by USAA that provided up to $10,000 in PIP benefits and a $1,000 "insured-elected deductible." The policy provided that USAA elected to reimburse medical bills pursuant to the statutory fee schedules provided in section 627.736(5)(a)1, Florida Statutes (2013). Florida Hospital sent a bill to USAA for those medical services totaling $2,503.82, which was received by USAA on February 1, 2014. As permitted under the policy, USAA opted to apply the statutory limitation at 75% of Florida Hospital's usual and customary charge, and limited Florida Hospital's $2,503.82 charge to $1,877.87. USAA then applied the $1,000 deductible to that amount, resulting in $877.87, applied the statutory 20% co-pay, resulting in $702.30, and paid that amount to Florida Hospital.

Florida Hospital filed its Complaint seeking $200 in PIP benefits, and alleging that USAA breached the policy by not making payments in the amount required by the PIP statute, i.e., that the deductible should be applied to Florida Hospital's entire charge first, and then the fee schedule reimbursement limitation should be applied to that post-deductible amount. Below are the calculations Florida Hospital and USAA used to determine the amount owed:

Florida Hospital's Calculation:

$2,503.82	Total Charge
-$1,000.00	Deductible
$1,503.82	
$1,127.87	Fee Schedule Adjustment (75%)
X 80%	Applying 20% Statutory Co-Pay
$902.30	Amount Alleged To Be Due Under The Policy

USAA's Calculation:

$2,503.82	Total Charge
$1,877.87	Fee Schedule Adjustment (75%)
-$1,000.00	Deductible
$877.87	
X 80%	Applying 20% Statutory Co-Pay
$702.30	Amount Paid by USAA

Both parties moved for summary judgment. The trial court entered final summary judgment in favor of Florida Hospital in the amount of $200, plus interest, thus adopting Florida Hospital's argument that the plain language of section 627.739(2) required USAA to subtract Rivera's deductible from Florida Hospital's total charges before applying the reimbursement limitation found in section 627.736(5)(a)1.b. This instant appeal followed.

STANDARD OF REVIEW

"The standard of review of a trial court's entry of summary final judgment is *de novo*." *Evans v. McCabe 415, Inc.*, 168 So. 3d 238, 240 (Fla. 5th DCA 2015); *see also Volusia Cnty. V. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 128 (Fla. 2000). Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law. *Menendez v. Palms West Condominium Ass'n*, 736 So. 2d 58 (Fla. 1st DCA 1999).

DISCUSSION

Under section 627.739, the insurer has the burden to prove it complied with the statute's mandates in order to establish that a deductible is applicable. The question raised here is whether

the insurer is permitted to apply the fees schedule to bills before applying an applicable deductible. The trial court determined that Rivera was subject to a $1,000 deductible, and USAA has not cross-appealed that determination. As such, we will not disturb the trial court's determination. Additionally, the trial court found the charges reasonable and Appellant has not asserted that Florida Hospital's "usual and customary" charges were unreasonable. To the contrary, Appellant argues that it may rely upon the charges for purposes of calculating its "limited reimbursement under the policy.[1] We agree with the trial court's determination that the charges were reasonable under the statute. We now turn to the main issue on appeal.

Section 627.739(2), regarding PIP deductibles, was amended in 2003 to state, "The deductible amount must be applied to 100 percent of the expenses and losses described in s. 627.736." When a statute cross-references another statute, it incorporates that statute as it existed when the referencing statute was enacted, "unaffected by subsequent amendments." *Moore v. State, Dep't of Revenue*, 536 So. 2d 1050, 1051 (Fla. 1st DCA 1988). In 2003, section 627.736(1)(a) stated that every PIP insurance policy "shall provide personal injury protection to the named insured . . . as follows: . . . Eighty percent of all reasonable expenses for medically necessary medical . . . services, . . . and medically necessary . . . hospital . . . services." When section 627.739(2) was amended in 2003, section 627.736 did not contain the fee schedule reimbursement limitation now found at subsection (5)(a)1.b. § 627.736, Fla. Stat. (2003).

[1] This is buttressed by the fact that USAA received Florida Hospital's bill, authenticated the claim, and established coverage. It indicated that the only reduction to the charges was pursuant to the fee schedule and that the charges were accepted as the "usual and customary" charge of Florida Hospital. Thus, based on USAA's actions, it made the determination that Florida Hospital's claim was compensable and that it was reasonable, related, and medically necessary when it applied the bill to the deductible.

USAA argues that the deductible should be applied to Florida Hospital's charge after the fee schedule reimbursement limitation in section 627.736(5)(a)1.b. of the 2014 version of the statute is applied to the total charge. There are several reasons why this position is unavailing.

First, in 2003, when section 627.739(2) was amended to include the language regarding to what the deductible applies, section 627.736 did not contain subsection (5)(a)1.b. Thus, the language "expenses and losses described in s. 627.736" to which the deductible is applied could not have been referring to an amount calculated under a nonexistent provision.

Second, the plain language of section 627.739(2) states that the deductible is to be applied to "expenses and losses described in s. 627.736." Subsection (5)(a)1.b. refers to the reimbursement level for emergency services and care that a hospital charges.[2] Nowhere in section 627.736 is this referred to as an "expense." Instead, it is a reimbursement limitation, which is not an expense. If the Legislature wanted the deductible to be applied to a reimbursement limitation, then it would have used those words in section 627.739(2); instead, the Legislature chose "expenses."

Third, the Legislature included the phrase "100 percent" before "of the expenses and losses" in section 627.739(2). This indicates that it intended the deductible to apply to the entire expense, rather than to the eighty percent of all reasonable expenses for medically necessary medical services that section 627.736(1)(a) mandates PIP insurance cover. As Florida Hospital argues, it does not make sense for the Legislature to include the phrase "100 percent," before "expenses," but intend for the deductible to be applied to a different percentage of the expenses, as it would be if USAA's calculation method is used. The statute states simply that the deductible

[2] Section 627.736(5) is titled "Charges for treatment of injured persons." Subsection (a) states that a hospital may charge the insurer only a reasonable amount for its services, and sets forth several factors for determining whether a charge is reasonable. § 627.736(5)(a), Fla Stat. (2014). Subsection (5)(a)1.b. states, "The insurer may limit reimbursement to 80 percent of the following schedule of maximum charges: . . . For emergency services and care provided by a hospital licensed under chapter 395, 75 percent of the hospital's usual and customary charges."

is to be applied to "100 percent of the expenses and losses described in s. 627.736." The court is not permitted to add language to a clear and unambiguous statute.[3]

Thus, under the plain language of section 627.739(2), the trial court did not err in applying the deductible to Florida Hospital's expenses and then, after doing so, reducing that amount by the fee schedule reimbursement limitation in section 627.736(5)(a)1.b. The plain language demonstrates that USAA may not apply the fee schedule reduction pursuant to section 627.736(5)(a)1 to Florida Hospital's charges before applying the insured's deductible.[4]

Importantly, the main issue in this appeal has been litigated extensively and resolved by the Fifth District Court of Appeal, where the court has consistently held that section 627.739(2) currently requires that the deductible be subtracted from the total amount of medical charges before

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[3] *See B.C. v. Fla. Dep't of Children & Families*, 887 So. 2d 1046, 1052 (Fla. 2004) (court not permitted to add words to unambiguous statute that Legislature did not include), *superseded on other grounds by statute as recognized in B.K. v. Dep't of Children & Families*, 166 So. 3d 866, 873 (Fla. 4th DCA 2015); *see also United Auto. Ins. Co. v. Rodriguez*, 808 So. 2d 82, 85 (Fla. 2001) ("Where the wording of the Law is clear and amenable to a logical and reasonable interpretation, a court is without power to diverge from the intent of the Legislature as expressed in the plain language of the Law.").

[4] We note that the 2003 Senate Staff Analysis and Economic Impact Statement gives credence to the argument that the intent of the 2003 amendments was to apply the deductible before reducing the medical expenses pursuant to the statutory reimbursement limitations. Specifically, the pertinent part of the staff analysis provides:

> [The bill] [a]mends s. 627.739, F.S., relating to PIP deductibles, to change the calculation of the PIP deductible to require that it must be applied to 100 percent of medical expenses, rather than to the current 80 percent of expenses that PIP pays. This provision has the effect of requiring PIP to pay more in benefits than it does now if a deductible is elected. For example, under current law: $5,000 medical bill, PIP pays 80 percent, or $4,000, minus $2,000 deductible = $2,000. Under this provision: $5,000 medical bill, minus $2,000 deductible, is $3,000. PIP pays 80 percent X $3,000 = $2,400.

Fla. S. Comm. on Banking & Ins., CS for SB 32–A (2003) Staff Analysis 16 (May 15, 2003). However, we have not relied on this report in our analysis. We only note it here because it confirms our conclusion about how the deductible should be applied under section 627.739(2). *See Townsend v. R.J. Reynolds Tobacco Co.*, 192 So. 3d 1223, 1229 (Fla. 2016) (noting that, after examining a staff analysis of the enacting law, "[a]lthough it is not necessary to delve into the legislative history of section 55.03(3), Florida Statutes (2010), because the language is clear and unambiguous, the legislative history nevertheless confirms our reading of the statute"); *Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 368 (Fla. 2013) ("The legislative summary in a staff analysis regarding FDUTPA affords further support for the principal [sic] ...."); *Larimore v. State*, 2 So. 3d 101, 109 n.4 (Fla. 2008) ("This interpretation is confirmed by Senate staff analyses on chapter 99–222, Laws of Florida ...."); *G.G. v. Fla. Dep't of Law Enf.*, 97 So. 3d 268, 273 (Fla. 1st DCA 2012) ("Our decision does not rely on staff analyses.... The staff analyses support the position advocated here by G.G., not FDLE.").

applying the reimbursement limitation under section 627.736(5)(a)1.b. *See Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr. a/a/o Jose Sanchez*, 249 So. 3d 779, 780 (Fla. 5th DCA 2018); *Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr. a/a/o Parent*, 236 So. 3d 1183, 1192 (Fla. 5th DCA 2018); *Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr. a/a/o Pena*, 236 So. 3d 1182, 1182 (Fla. 5th DCA 2018). In all three cases, the Fifth District Court of Appeal certified this issue to the Florida Supreme Court as one of great public importance.[5] The Florida Supreme Court has accepted jurisdiction. *Progressive Select Ins. Co. v. Fla. Hosp. Med. Ctr.*, No. SC18-278, 2018 WL 2064894, at *1 (Fla. Mar. 20, 2018). At the time of this opinion, it has not yet rendered its decision. As such, we are bound to affirm the judgment below. While recognizing that the Florida Supreme Court's decision will likely establish controlling Florida law on the issue, we must render a decision without further delay. "It is not for this court to pick and choose which version of the statute to apply; we must apply the law as it currently exists. Section 627.739(2) currently requires that the deductible be applied to 100% of the expenses and losses, and that is the version the [trial] court properly applied." *Parent*, 236 So. 3d at 1192. We see no divergence from the correct law in the trial court's Order entering summary judgment for Florida Hospital, and we see no violation of a clearly established principle of law that results in a miscarriage of justice. *Id*.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The "Order Granting Plaintiff's Motion for Final Summary Judgment," entered on July 20, 2017, is **AFFIRMED**.
2. USAA's "Motion for Attorney's Fees," filed on January 31, 2018, is **DENIED**.

[5] In adjudicating this issue, the Fourth District Court of Appeal reached a contrary result in several of its cases and certified conflict with the Fifth District Court of Appeal decisions. *See State Farm Mut. Auto. Ins. Co. v. Care Wellness Ctr., LLC*, 240 So. 3d 22, 31 (Fla. 4th DCA 2018); *USAA Gen. Indem. Co. v. Gogan*, 238 So. 3d 937, 937 (Fla. 4th DCA 2018); *Progressive Select Ins. Co. v. Blum*, 238 So. 3d 852, 853 (Fla. 4th DCA 2018).

3. Florida Hospital's "Motion for Appellate Attorney's Fees," filed on February 15, 2018, is **GRANTED** and the assessment of those fees is **REMANDED** to the trial court.

DONE AND ORDERED in Orlando, Orange County, Florida this _____day of October, 2018.

/S/_____
JOHN E. JORDAN
Presiding Circuit Judge

MARQUES and CRANER, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order has been furnished to: **The Honorable Eric H. DuBois**, Orange County Judge, Orange County Courthouse, 425 N. Orange Ave., Orlando, Florida 32801; **Douglas H. Stein, Esq.**, Association Law Group, P.L., 1200 Brickell Avenue, PH 2000, Miami, Florida 33131; and **Robert J. Hauser, Esq.**, Pankauski Hauser, PLLC., 415 South Olive Avenue, West Palm Beach, Florida 33401, this _____ day of October, 2018.

/S/_____
Judicial Assistant