

STATE OF MICHIGAN
IN THE SUPREME COURT

COVENANT MEDICAL CENTER,

Plaintiff/Appellee,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a Michigan
insurance corporation,

Defendant/Appellant.

Supreme Court No. 152758

Court Of Appeals Docket No. 322108

Saginaw County Circuit Court
Case No. 13-020416-NF

_____ /

**MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION'S *AMICUS CURIAE* BRIEF IN
SUPPORT OF APPELLANT STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY**

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STATEMENT OF INTEREST

The Michigan Catastrophic Claims Association (the “MCCA”) is an association of all insurers writing no-fault insurance in Michigan. The MCCA indemnifies its member insurers for amounts paid in personal protection insurance benefits, also known as PIP benefits, in excess of a statutory retention amount.

The Court of Appeals’ decision in this case has made it difficult for MCCA member insurers to settle catastrophic cases with their insureds because of the number of providers involved in catastrophic cases.

Member insurers must report catastrophic claims to the MCCA. Of the more than 35,275 claims reported to the MCCA, 16,471 remain open. Of those 16,471 claims, members have reported that 1,305 are currently involved in litigation.

The MCCA has indemnified its member insurers for payments made to 27,337 different providers since July 1, 2011.

A member insurer often pays PIP benefits to dozens of providers on a single claim. Of the MCCA’s claims, the 30 with the highest reserves (discounted to present value) average over 68 providers per claim, counting providers that have rendered services since July 1, 2011 only.

When a member insurer attempts to settle a claim with its insured, the Court of Appeals’ decision now requires the member to notify all providers that might claim an interest in the settlement amount. This process is cumbersome and an obstacle to reaching settlements in the over 1,300 cases currently pending.

The MCCA has a direct interest in the outcome of this case. If the Court does not reverse, settlements of claims for which the MCCA bears the ultimate financial responsibility will continue to prove difficult for member insurers to obtain.

INDEX OF AUTHORITIES

	Page(s)
Cases	
<i>In re Certified Question: Preferred Risk,</i> 433 Mich 710 (1989)	1
<i>League General Ins Co v Michigan Catastrophic Claims Ass'n,</i> 435 Mich 338 (1990)	1
Statutes	
MCL 500.3101(1)	1
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MCL 500.3107(1)(a)	1
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STATEMENT OF QUESTIONS INVOLVED

The Court of Appeals reversed the Circuit Court's grant of summary judgment to State Farm, and held that a settlement and release between an insured and State Farm, his No-Fault insurer, over personal protection insurance benefits, including all medical bills, did not bar a later suit by the insured's health care provider, Covenant Medical Center ("Covenant"), for payment of medical bills, because State Farm had prior written notice of Covenant's bill, and therefore, under MCL 500.3112, State Farm was required to ask the Circuit Court for an order apportioning the benefits.

Should this Court reverse where:

- a. The No-Fault Insurance Act does not grant providers a claim against insurers for PIP benefits;
- b. Even assuming a provider had a claim against an insurer under the No-Fault Insurance Act, that claim would be derivative of the insured's claim; therefore, if the insured is not eligible for PIP benefits for any reason, including the signing of a release, neither is the provider;
- c. For both of these reasons, a request to an insurer by a provider for payment of bills for PIP services rendered is not a "claim of some other person," and MCL 500.3112 does not apply; and
- d. An apportionment order under MCL 500.3112 is only a process that an insurer may invoke when it wants confirmation from the court regarding who is the proper recipient of survivor benefits, and is not, as the Court of Appeals held, a mandatory proceeding that must always be held to approve the apportionment of settlement proceeds with an insured after a provider (or more likely, providers plural) have put the insurer on notice that they provided PIP services to the insured?

Amicus Curiae, the Michigan Catastrophic Claims Association answers: "Yes"

INTRODUCTION

The No-Fault Insurance Act requires insurers writing no-fault automobile insurance in Michigan to provide unlimited lifetime PIP benefits to persons injured in motor vehicle accidents. MCL 500.3101(1). PIP benefits include “all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation.” MCL 500.3107(1)(a). The MCCA reimburses no-fault automobile insurers for amounts paid for PIP benefits in excess of \$545,000. MCL 500.3104. Before July 1, 2002, the MCCA reimbursed insurers after they paid \$250,000 in PIP benefits, but that amount has gradually increased over time. MCL 500.3104(2)(a).

The MCCA is a nonprofit association. The Michigan legislature created the MCCA to spread the cost of providing unlimited lifetime PIP benefits across all Michigan automobile insurers. The legislature responded “to concerns that Michigan’s no-fault law provision for unlimited lifetime benefits placed too great a burden on insurers, particularly small insurers, in the event of ‘catastrophic’ injury claims.” *In re Certified Question: Preferred Risk*, 433 Mich 710, 714; 449 NW2d 660 (1989); *see also League General Ins Co v Michigan Catastrophic Claims Ass’n*, 435 Mich 338, 340; 458 NW2d 632 (1990) (“the cost of covering an insured’s catastrophic losses . . . could be overwhelming to an individual insurance company”). Not only do the costs immediately following an accident prove significant (e.g., hospital charges), but insurers provide benefits throughout a claimant’s life (e.g., lifetime residential care is the MCCA’s single greatest cost).

AMOUNTS INDEMNIFIED BY THE MCCA

The cost of PIP benefits for a single catastrophic claim oftentimes reaches into the millions of dollars. To date, the MCCA has reimbursed as much as \$20.0 million on a single claim. During the 12-month period ending June 30, 2016, the MCCA paid \$1.1 billion to insurers

for PIP benefits they paid for injured persons, a monthly average of \$93.1 million. The annual amount paid by the MCCA continues to rise each year, as the cost of PIP benefits continues to rise and new claims continue to outnumber claims that close.

NUMBER OF CLAIMS REPORTED TO THE MCCA THAT REMAIN OPEN

The MCCA is well-positioned to describe the scope of the impact of the Court of Appeals' decision in *Covenant Medical Center, Inc v State Farm*. Under MCL 500.3104(b), "members shall promptly report to the association each claim that, on the basis of the injuries or damages sustained, may reasonably be anticipated to involve the association if the member is ultimately held legally liable for the injuries or damages." The MCCA created a Claim Guide for insurers to clarify and outline required procedures. The Claim Guide requires an insurer to report a claim involving a traumatic brain injury, a spinal cord injury resulting in quadriplegia or paraplegia, burns over 50% of the body, amputation of a major limb, and any other injury with a combined outstanding loss reserve and payments totaling \$300,000 or more. From the time the Legislature created the MCCA through June 30, 2016, member insurers reported 35,275 claims. Of those claims, 16,471 remain open.

CATEGORIES OF PAYMENTS INDEMNIFIED

A catastrophically injured person almost always receives products, services, and accommodations from a range of different providers. The MCCA tracks payments in the following general categories:

	<u>Percent of Total MCCA Costs</u>
• Residential Care	20.43%
• Attendant Care—Family	18.81%
• Attendant Care—Agency	18.09%
• Prescriptions	10.26%
• Hospitalization	8.36%
• Rehabilitation Services	7.77%
• Doctors/Lab	7.22%

• Transportation	2.40%
• Case Management	2.12%
• Home Purchase/Modification	1.19%
• Equipment	0.73%
• Prosthesis	0.63%
• Wage Loss	0.41%
• Vehicle Purchase/Modification	0.22%
• Replacement and Essential Services	0.13%
• Other	<u>1.23%</u>
Total	100.00%

Even within each of these general categories, an injured person often will receive services from many providers. As just a few examples, the Doctors/Lab category includes the costs of treating physicians in diverse disciplines. The Rehabilitation category includes payments for physical therapy, occupational therapy, speech therapy, and massage therapy, among other forms of rehabilitation. A single claimant may receive each of these therapies. The Home Purchase/Modification category may include, for a single claimant, services provided by an architect, a builder, and an equipment provider (e.g., for an overhead lift system). The “Other” category includes costs for guardianship and conservator services, and other services. The MCCA’s Claim Guide gives examples of services in each of these categories (attached as Exhibit A).

NUMBER OF PROVIDERS RENDERING SERVICES TO CLAIMANTS

The following chart shows the number of providers (unique tax identification numbers or TIN’s) per category, since July 1, 2011, that have rendered services for claimants on claims reported to the MCCA by insurers. The total number of providers is 27,337:

	<u>Number of Providers</u>
• Attendant Care—Agency	2,023
• Attendant Care—Family	4,660
• Case Management	1,024
• Doctors/Labs	13,856
• Equipment	640

• Home Purchase/Modifications	787
• Hospitalization	1,865
• Other	2,721
• Prosthesis	235
• Rehabilitation Services	5,035
• Residential Care	1,302
• Prescriptions/Supplies	5,143
• Replacement/Essential Services	1,235
• Transportation	2,975
• Vehicle Purchase/Modifications	<u>157</u>
Total Providers	43,676

Although adding the number of providers vertically yields a result of 43,676, this figure inflates the number of total providers because it includes providers providing services in more than one category. For example, a facility may provide residential care services to claimants living in the facility, and also provide rehabilitation services to other nonresident claimants. The total number of providers since July 1, 2011 is 27,337. Each of these providers may seek payment from claimants for services rendered. Many of the providers have provided services to multiple claimants.

Of the MCCA's claims, the 30 with the highest reserves (discounted to present value) average over 68 providers per claim, counting providers that have rendered service since July 1, 2011 only.

1.	54	11.	101	21.	132
2.	132	12.	62	22.	64
3.	77	13.	82	23.	53
4.	90	14.	113	24.	37
5.	82	15.	24	25.	26
6.	58	16.	83	26.	36
7.	48	17.	84	27.	79
8.	66	18.	51	28.	75
9.	82	19.	70	29.	22
10.	49	20.	91	30.	30

Attached as Exhibit B is a breakdown by service category of the number of providers per category for each of these 30 claims.

NUMBER OF LITIGATED CLAIMS

Even after a claim is reported to the MCCA, insurers continue to have reporting duties to the MCCA. Under the MCL 500.3104(7)(b), members must report to the MCCA “subsequent developments likely to materially affect the interest of the association in the claim.” The MCCA’s Claim Guide notes that a claim moving into litigation is a development that an insurer should report to the MCCA. Of the 16,471 active claims reported by insurers to the MCCA, 1,305 are currently involved in litigation.

RELIEF REQUESTED

What all of this means is that in the most serious No-Fault cases, those involving catastrophic claims, of which there are thousands, there are numerous providers—often dozens. Allowing these providers to bring their own lawsuits against an insurer for payment of their bills would result in extensive litigation, increasing costs and burdening the system, contrary to the goals of the No-Fault Insurance Act. Similarly, holding that a settlement with an insured, including for medical bills, does not bar claims by providers unless and until the insurer has notified each and every provider, and obtained court approval, will make settlements extremely difficult (if not impossible, in some cases), and therefore much less common. This will place increased financial burdens on the insurers, which, in catastrophic cases, means more of a burden on the MCCA. Indeed, if members are required to pay benefits twice—once to the insured and once to the provider—as State Farm was required to do here, more claims may reach the “catastrophic” level. When the payment burden on the MCCA increases, the MCCA assessment,

which is usually passed along to Michigan drivers in the form of their premiums, increases as well.

Amicus Curiae MCCA requests that this Court reverse the Court of Appeals' opinion, reinstate the Circuit Court opinion and order, and grant such other relief as is just and proper.

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Dated: October 6, 2016

EXHIBIT LIST

Exhibit A	MCCA Payment Categories and Codes
Exhibit B	MCCA Claims with Highest Discounted Reserves

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A

MICHIGAN CATASTROPHIC CLAIMS ASSOCIATION

PAYMENT CATEGORIES AND CODES:

CODE: CATEGORY: Examples of Services: (Not all inclusive)

HOSP	Hospitalization	<ul style="list-style-type: none"> All inpatient stays
		<ul style="list-style-type: none"> Emergency room
		<ul style="list-style-type: none"> Hospital/ Inpatient rehab
		<ul style="list-style-type: none"> One day surgeries/Outpatient surgery
DRLB	Doctor/Labs	<ul style="list-style-type: none"> Acupuncture
		<ul style="list-style-type: none"> Anesthesia
		<ul style="list-style-type: none"> Blood draws
		<ul style="list-style-type: none"> Cat Scans
		<ul style="list-style-type: none"> Epidural injections
		<ul style="list-style-type: none"> Lab work
		<ul style="list-style-type: none"> MRI
		<ul style="list-style-type: none"> Office visits (all doctors) <ul style="list-style-type: none"> Chiropractors Dental Pain Management Psychiatric/Psychological Treatment
		<ul style="list-style-type: none"> Outpatient hospital services
		<ul style="list-style-type: none"> Respiratory therapy
		<ul style="list-style-type: none"> Ultrasound
		<ul style="list-style-type: none"> X-Rays
		<ul style="list-style-type: none"> Infusion therapy <u>if performed by a physician</u>
HOME	Home Purchase/Modifications	
VEHI	Vehicle Purchase/Modifications	
EQU	Equipment Purchase	<ul style="list-style-type: none"> Electric wheelchair
		<ul style="list-style-type: none"> Generators
		<ul style="list-style-type: none"> Hospital beds
		<ul style="list-style-type: none"> Manual wheelchair
		<ul style="list-style-type: none"> Standing wheelchair
		<ul style="list-style-type: none"> Ventilators
		<ul style="list-style-type: none"> Scooters
PROS	Prosthesis	<ul style="list-style-type: none"> Bills associated with prosthesis, repairs and supplies
		<ul style="list-style-type: none"> Prosthesis

RXSP	Prescriptions/Supplies	<ul style="list-style-type: none"> • Dental appliances
		<ul style="list-style-type: none"> • Electronic monitoring services - (life line)
		<ul style="list-style-type: none"> • Equipment repairs and maintenance fees
		<ul style="list-style-type: none"> • Eyeglasses
		<ul style="list-style-type: none"> • Hearing aids
		<ul style="list-style-type: none"> • Medical supplies
		<ul style="list-style-type: none"> • Orthotics
		<ul style="list-style-type: none"> • Prescribed nutritional supplements
		<ul style="list-style-type: none"> • Prescription drugs
		<ul style="list-style-type: none"> • Rental of equipment - including WC, bed, ramp rental
		<ul style="list-style-type: none"> • Tens unit
REHA	Rehabilitation Services	<ul style="list-style-type: none"> • Driving evaluation
		<ul style="list-style-type: none"> • Massage therapy
		<ul style="list-style-type: none"> • Music therapy
		<ul style="list-style-type: none"> • Occupational therapy
		<ul style="list-style-type: none"> • Outpatient rehabilitation services
		<ul style="list-style-type: none"> • Personal trainer/gym membership
		<ul style="list-style-type: none"> • Physical therapy
		<ul style="list-style-type: none"> • Recreational therapy
		<ul style="list-style-type: none"> • Sheltered workshop
		<ul style="list-style-type: none"> • Speech therapy
TRAN	Transportation	<ul style="list-style-type: none"> • Ambulance
		<ul style="list-style-type: none"> • Commercial service
		<ul style="list-style-type: none"> • Mileage
		<ul style="list-style-type: none"> • Vehicle insurance
		<ul style="list-style-type: none"> • Vehicle repairs
CSMT	Case Management	<ul style="list-style-type: none"> • Case management
		<ul style="list-style-type: none"> • Vocational rehabilitation
WLSL	Wage Loss/Survivors' Loss	<ul style="list-style-type: none"> • Survivors' loss
		<ul style="list-style-type: none"> • Wage loss

SERV	Replacement/Essential Services	<ul style="list-style-type: none"> • Replacement services
OTHR	Other	<ul style="list-style-type: none"> • Cell phone charges • COBRA / Health insurance • College tuition • Funeral benefits • Guardianship fees/conservator fees • Home repairs • Homeowners insurance • Property taxes • Rent/Utilities • Tutoring
ACFM	Attendant Care – Family	
ACAG	Attendant Care – Agency	<ul style="list-style-type: none"> • Agency provided care • Includes a family incorporated as an agency • Skilled nursing home visit
RESI	Residential Care	<ul style="list-style-type: none"> • Includes residential fees, therapies, psychiatric visits, and case manage performed in-house by the residential facility

B

Michigan Catastrophic Claims Association
30 Claims With The Highest Discounted Reserves
As of 06/30/2016

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Claim Number	Payment Description	Provider Count
Claim 1		54
	Attendant Care - Agency	3
	Case Management	1
	Doctor/Labs	35
	Equipment	1
	Hospitalization	2
	Prescriptions	9
	Rehabilitation Services	1
	Transportation	2
Claim 2		132
	Attendant Care - Agency	4
	Attendant Care - Family	1
	Case Management	6
	Doctor/Labs	62
	Hospitalization	10
	Other	11
	Prescriptions	9
	Rehabilitation Services	12
	Replacement and Essential Services	1
	Residential Care	7
	Transportation	9
Claim 3		77
	Attendant Care - Agency	3
	Attendant Care - Family	1
	Case Management	1
	Doctor/Labs	27
	Equipment	2
	Home Purchase/Modification	5
	Hospitalization	4
	Other	2
	Prescriptions	15
	Rehabilitation Services	8
	Residential Care	1
	Transportation	7
	Vehicle Purchase/Modification	1
Claim 4		90
	Attendant Care - Agency	4
	Attendant Care - Family	1
	Case Management	3
	Doctor/Labs	36

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Claim Number	Payment Description	Provider Count
	Hospitalization	3
	Other	3
	Prescriptions	20
	Rehabilitation Services	10
	Transportation	8
	Vehicle Purchase/Modification	2
Claim 5		82
	Attendant Care - Agency	5
	Attendant Care - Family	1
	Case Management	3
	Doctor/Labs	23
	Equipment	1
	Hospitalization	4
	Other	8
	Prescriptions	16
	Prosthesis	2
	Rehabilitation Services	10
	Residential Care	1
	Transportation	8
Claim 6		58
	Attendant Care - Agency	1
	Attendant Care - Family	1
	Case Management	2
	Doctor/Labs	23
	Equipment	2
	Home Purchase/Modification	2
	Hospitalization	3
	Other	1
	Prescriptions	8
	Rehabilitation Services	7
	Residential Care	3
	Transportation	5
Claim 7		48
	Case Management	3
	Doctor/Labs	15
	Hospitalization	2
	Other	3
	Prescriptions	11
	Rehabilitation Services	7
	Residential Care	5

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Claim Number	Payment Description	Provider Count
	Transportation	2
Claim 8		66
	Attendant Care - Agency	1
	Case Management	2
	Doctor/Labs	40
	Hospitalization	5
	Other	3
	Prescriptions	6
	Rehabilitation Services	1
	Residential Care	6
	Transportation	2
Claim 9		82
	Attendant Care - Agency	6
	Case Management	2
	Doctor/Labs	41
	Equipment	4
	Hospitalization	3
	Prescriptions	12
	Rehabilitation Services	5
	Transportation	8
	Vehicle Purchase/Modification	1
Claim 10		49
	Attendant Care - Agency	3
	Case Management	1
	Doctor/Labs	12
	Equipment	2
	Home Purchase/Modification	1
	Hospitalization	3
	Other	5
	Prescriptions	13
	Rehabilitation Services	5
	Transportation	4
Claim 11		101
	Attendant Care - Agency	8
	Case Management	5
	Doctor/Labs	41
	Equipment	1
	Home Purchase/Modification	1
	Hospitalization	5
	Other	6

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Claim Number	Payment Description	Provider Count
	Prescriptions	11
	Rehabilitation Services	13
	Residential Care	1
	Transportation	8
	Vehicle Purchase/Modification	1
Claim 12		61
	Attendant Care - Agency	1
	Attendant Care - Family	1
	Case Management	4
	Doctor/Labs	16
	Equipment	2
	Hospitalization	1
	Other	1
	Prescriptions	20
	Rehabilitation Services	13
	Residential Care	1
	Transportation	1
Claim 13		82
	Attendant Care - Agency	5
	Attendant Care - Family	4
	Case Management	2
	Doctor/Labs	27
	Equipment	2
	Home Purchase/Modification	3
	Hospitalization	6
	Other	6
	Prescriptions	11
	Rehabilitation Services	9
	Replacement and Essential Services	1
	Transportation	6
Claim 14		113
	Attendant Care - Agency	7
	Attendant Care - Family	1
	Case Management	8
	Doctor/Labs	29
	Equipment	4
	Home Purchase/Modification	1
	Hospitalization	3
	Other	7
	Prescriptions	24

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Claim Number	Payment Description	Provider Count
	Rehabilitation Services	21
	Residential Care	1
	Transportation	7
Claim 15		24
	Doctor/Labs	15
	Hospitalization	2
	Other	1
	Prescriptions	3
	Rehabilitation Services	2
	Residential Care	1
Claim 16		83
	Attendant Care - Agency	3
	Case Management	3
	Doctor/Labs	40
	Equipment	1
	Home Purchase/Modification	3
	Hospitalization	4
	Other	5
	Prescriptions	8
	Rehabilitation Services	6
	Replacement and Essential Services	2
	Residential Care	1
	Transportation	7
Claim 17		82
	Attendant Care - Agency	1
	Attendant Care - Family	2
	Case Management	6
	Doctor/Labs	24
	Equipment	4
	Home Purchase/Modification	2
	Hospitalization	5
	Other	6
	Prescriptions	13
	Rehabilitation Services	7
	Replacement and Essential Services	3
	Residential Care	1
	Transportation	8
Claim 18		51
	Case Management	1
	Doctor/Labs	38

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Claim Number	Payment Description	Provider Count
	Equipment	1
	Hospitalization	1
	Prescriptions	7
	Residential Care	3
Claim 19		70
	Attendant Care - Agency	4
	Case Management	2
	Doctor/Labs	19
	Home Purchase/Modification	2
	Hospitalization	4
	Other	19
	Prescriptions	12
	Rehabilitation Services	3
	Transportation	4
	Vehicle Purchase/Modification	1
Claim 20		91
	Attendant Care - Agency	3
	Case Management	3
	Doctor/Labs	42
	Equipment	2
	Hospitalization	4
	Other	1
	Prescriptions	17
	Rehabilitation Services	14
	Residential Care	3
	Transportation	2
Claim 21		129
	Attendant Care - Agency	16
	Attendant Care - Family	1
	Case Management	7
	Doctor/Labs	55
	Equipment	5
	Hospitalization	8
	Other	4
	Prescriptions	11
	Rehabilitation Services	7
	Residential Care	5
	Transportation	9
	Vehicle Purchase/Modification	1

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Claim Number	Payment Description	Provider Count
Claim 22		64
	Attendant Care - Agency	2
	Attendant Care - Family	1
	Doctor/Labs	31
	Equipment	3
	Hospitalization	6
	Prescriptions	7
	Rehabilitation Services	6
	Residential Care	1
	Transportation	7
Claim 23		53
	Attendant Care - Agency	1
	Case Management	1
	Doctor/Labs	21
	Equipment	3
	Hospitalization	4
	Other	1
	Prescriptions	14
	Rehabilitation Services	6
	Transportation	2
Claim 24		37
	Attendant Care - Agency	3
	Attendant Care - Family	2
	Case Management	1
	Doctor/Labs	7
	Equipment	2
	Prescriptions	12
	Rehabilitation Services	8
	Transportation	2
Claim 25		26
	Case Management	1
	Doctor/Labs	11
	Hospitalization	5
	Other	1
	Prescriptions	3
	Residential Care	2
	Transportation	3
Claim 26		36
	Attendant Care - Agency	2
	Case Management	2

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Claim Number	Payment Description	Provider Count
	Doctor/Labs	18
	Hospitalization	1
	Prescriptions	4
	Rehabilitation Services	2
	Residential Care	2
	Transportation	5
Claim 27		79
	Case Management	1
	Doctor/Labs	29
	Hospitalization	5
	Other	1
	Prescriptions	17
	Rehabilitation Services	5
	Residential Care	9
	Transportation	12
Claim 28		75
	Attendant Care - Agency	2
	Case Management	3
	Doctor/Labs	31
	Equipment	1
	Hospitalization	2
	Other	2
	Prescriptions	15
	Rehabilitation Services	13
	Transportation	6
Claim 29		22
	Doctor/Labs	8
	Other	3
	Prescriptions	5
	Residential Care	6
Claim 30		30
	Attendant Care - Agency	3
	Case Management	1
	Doctor/Labs	14
	Hospitalization	1
	Other	1
	Prescriptions	8
	Rehabilitation Services	1
	Residential Care	1