IN THE SUPREME COURT OF FLORIDA

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
Petitioners,

v.

Respondent.
_____/

CASE NO. SC05-435

CONSOLIDATED

HOLY CROSS HOSPITAL, INC.
Cross-Petitioner,

v.

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY
Cross-Respondents.
_____/

CASE NO. SC05-545

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT OF FLORIDA

CROSS-ANSWER/REPLY BRIEF OF PETITIONERS CROSS-RESPONDENTS ALLSTATE INSURANCE COMPANY & ALLSTATE INDEMNITY COMPANY

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INTRODUCTION

Respondent Holy Cross Hospital Inc.'s ("HCH") brief provided neither an answer to Allstate's arguments nor a basis to overturn the decisions on appeal. Indeed, HCH does not even respond to many of the arguments in Allstate's opening brief. HCH's brief is a confession that the plain text, legislative history and underlying purpose of the PIP statute authorize Allstate's contractual network program.

HCH's brief never grapples with the comprehensive, well-reasoned holding by the Second District in *Nationwide Mut. Ins. Co. v. Jewell*, 862 So.2d 79 (Fla. 2d DCA 2003) ("*Jewell*"), which the Fourth District followed in the decision under review. HCH derides the *Jewell* opinion as being "difficult to imagine an opinion which could conflict with more rules of statutory interpretation," but offers no explanation as to where or how the *Jewell* court went wrong. HCH does not address the Second District's reasoning in *Jewell* for a good reason: the Court properly held that the language of Fla. Stat. § 627.736(10) ("Subsection 10") "did not limit insurers to entering into only direct contracts with providers" as HCH now suggests.

As the *Jewell* court correctly held, Subsection 10's requirements do not apply to – much less prohibit – agreed-to network programs like the one at issue here. HCH concedes that Subsection 10 is "clear and unambiguous," but cannot

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point to any language in the statute that prohibits Allstate's network program. Instead, HCH relies almost exclusively on the inapplicable canon of *expressio unius* to cobble together a statutory interpretation that ignores the plain language, the interpretation of the Office of Insurance Regulation, the legislative history, and the statute's underlying purpose. HCH's interpretation rewrites the first sentence of Subsection 10 to state that insurers may only enter into contracts "directly" with health care providers. The actual language of the statute, however, contains no such limitations.

Nor can HCH credibly challenge Allstate's compliance with its obligation under Subsection 1 of the PIP statute to pay eighty percent of all "reasonable" expenses incurred by insured's Winik and Wiesner. HCH entered into a contract that set the rates for expenses it agreed to accept. By definition, as the *Jewell* court held, those contractual rates to which HCH agreed are "reasonable" under Subsection 1.

Without any violation of Subsection 1, HCH cannot invoke that provision to cure its standing problems in this case. As a provider of medical treatment, HCH has no standing to challenge Allstate's network program. Nor can HCH rely on purported assignments from Allstate's insureds who received precisely what their policies required. Without any claim for damages, Allstate's insureds had no claim to assign.

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Finally, HCH and its amici mischaracterize Allstate's network program to shift the argument to issues beyond Subsection 10, such as "Silent PPOs" and "managed care." Those issues are irrelevant to this case. Subsection 10 is not a regulation of "Silent PPOs" or "managed care," but rather authorizes the contracts between insurers such as Allstate and providers such as HCH that form Allstate's network provider program.

Moreover, Allstate's network program does not implicate HCH's concerns regarding "Silent PPOs" and "managed care." Unlike "Silent PPOs" that are kept hidden from insureds, Allstate informed its insureds of the programs through an "800" number and mailing inserts. Nor does Allstate's program "manage" its PIP insureds' health care, but instead allows insureds complete freedom of choice as to their providers.

Stripped of its rhetoric and hyperbole, HCH's brief cannot obscure the obvious benefits the network program provides to Florida's insureds. Like the statute's plain text, its legislative history and the OIR's interpretation, policy considerations also support Allstate's network program.

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REPLY BRIEF

I. AS THE SECOND DISTRICT IN *JEWELL* CORRECTLY HELD, NOTHING IN SUBSECTION 10 PROHIBITS ALLSTATE'S NETWORK PROGRAM.

HCH argues that Subsection 10 is unambiguous and should be interpreted according to its plain meaning and *in pari materia* with the rest of the PIP statute. (HCH Br. at 20-24) Allstate agrees. A plain reading of the statute confirms the propriety of the program. There is no language in Subsection 10 that prohibits or regulates the network program challenged by this lawsuit.

Subsection 10 "does two basic things: (1) it authorizes PIP insurers to enter contractual arrangements for the provision of preferred provider medical services; and (2) it authorizes PIP insurers to issue preferred provider PIP policies, subject to certain conditions and requirements." *Jewell*, 862 So.2d at 84. Allstate's network program creates a "contractual arrangement" for the "provision of preferred provider medical services," without issuing any preferred provider policy. That is precisely what the statute permits.

Under Subsection 10, an insurer "may negotiate and enter into contracts with licensed health care providers for the benefits described in this section [the PIP statute] …" Fla. Stat. 627.736(10). The statute does not impose any prerequisites on an insurer that decides to enter into such contracts. In particular, "[n]othing in

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the text of subsection (10) – or any other provision of the no-fault statute – says that an insurer may contract with preferred providers only if the insurer issues preferred provider policies." *Jewell*, 862 So.2d at 85. The text does not suggest that insurers can *only* contract with providers *directly* rather than through an intermediary as well. *Jewell*, 862 So.2d at 84.

Indeed, Subsection 10 says only that an "insurer *may* provide an option to an insured to use a preferred provider at the time of purchase of policy … if the requirements of this subsection are met." Fla. Stat. 627.736(10) (emphasis added). "May," of course, is a permissive word. *Jewell*, 862 So.2d at 85. There is no requirement that an insurer offer preferred provider policies. And so long as the insurer does not offer preferred provider policies (and there is no dispute that Allstate does not), the "requirements of this subsection" do not apply. *Id.* ("The mandatory provisions of subsection (10) come into play only when an insurer issues a preferred provider PIP policy.").

A. The Second District's *Jewell* Decision Properly Analyzed Subsection 10.

HCH narrowly focuses its attack on *Jewell* on its holding that Subsection 10 allows both direct and indirect contractual arrangements. (HCH Br. at 33-34) The *Jewell* court rooted its analysis in the statute's plain and unambiguous text. *Jewell* properly interpreted the Subsection 10's unqualified language that an "insurer may negotiate and enter into contracts with licensed health care providers" to authorize

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Allstate's network program. *Id.* at 84. A reasonable user of the English language would interpret this text to encompass both direct and indirect contractual arrangements. As the *Jewell* court reasoned, had the legislature in Subsection 10 prohibited (rather than permitted) contracts between insurers and providers, this would have covered both direct and indirect contracts. *Id.* Conversely, the legislature's unrestricted authorization of such contracts can only be read to include both direct and indirect contracts. *Id.*

HCH argues that *Jewell's* statutory construction adds language to Subsection 10. (HCH Br. at 33) *Jewell*, however, interpreted the statute as written. As the *Jewell* court correctly held, the statute's text encompasses both direct and indirect contracts. HCH never explains how the plain English phrase authorizing insurers to "negotiate and enter into contracts with licensed health care providers" somehow prohibits indirect contracts between insurers and providers. Nothing in the statute creates a bar on any particular type of contractual relationship between insurers and providers. The text is permissive only.

Contrary to the *Jewell* court's construction, HCH's interpretation adds prohibitive language that the Florida legislature did not include in the statute. HCH argues that Subsection 10 "requires the insurer to negotiate and contract *directly* with the health care providers." (HCH Br. at 26-27) (emphasis added). But the word "directly" does not appear anywhere in the statute. That is the

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fundamental error in Holy Cross's interpretation. If the Legislature had intended to limit contractual arrangements, it could have said so, or at least inserted the word "direct" into the text as HCH now advocates. The Court should not add terms to the statute that the legislature did not include. *Knowles v. Beverly Enters.-Florida, Inc.*, 898 So.2d 1, 7 (Fla. 2004); *Donato v. AT&T*, 767 So.2d 1146, 1150-51 (Fla. 2000); *Jewell*, 862 So.2d at 85 ("If the legislature wishes to prohibit something, it is perfectly capable of saying so. Indeed, few words are more common in the language of legislation than the phrases 'may not' and 'shall not'.").

Finally, Subsection 10, in addition to authorizing Allstate's network program, regulates "preferred provider" PIP policies, not other contractual arrangements. Section 627.736 mandates the parameters of PIP coverage that must be afforded. Absent statutory authority to vary from those requirements, an insurer could not provide insureds with alternatives or choices regarding that coverage. Subsection 10 provides such authority for certain alternative PIP benefits by authorizing insurers to offer "preferred provider" PIP policies, if they wished. This statutory authorization and regulation of such alternative forms of PIP benefits does not preclude and is not inconsistent with the Allstate network program. As *Jewell* held, that Subsection 10 states that insurers "may" use preferred provider policies in no way means that insurers may not use network provider programs such as Allstate's. 862 So.2d at 85. The *Jewell* Court and the Court below

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interpreted Subsection 10 in a manner wholly consistent with this separate purpose of that statute.

B. The *Expressio Unius* Canon Is Irrelevant To A Proper Construction Of Subsection 10.

HCH also chides the *Jewell* court for not following the inapplicable *expressio unius* canon of construction. (HCH Br. at 34) HCH's arguments do not address any of the points in Allstate's initial brief explaining why the canon does not apply. (Initial Br. at 20-21) Instead, HCH argues that "the court's decision overlooks the rule of law that when the legislature expressly mentions one thing, its silence on another is deemed to be a rejection of that latter proposal." (HCH Br. at 34) The problem for HCH, of course, is that the statute does not "expressly mention" the "one thing" on which HCH hangs its interpretive hat. As the *Jewell* court recognized, the canon of *expressio unius* cannot be used to infer that the legislature intended to prohibit indirect contracts when Subsection 10 "does not refer specifically to direct contracts." 862 So.2d at 84. Subsection 10 only refers to "contracts," without distinguishing between direct and indirect ones. Thus, the canon simply does not apply. *See Christensen v. Harris County*, 529 U.S. 576, 583 (2000) (rejecting *expressio unius* to interpret statute where petitioners misidentified the "thing to be done"); *see also Swartz v. McDonald's Corp.*, 788 So.2d 937, 943-45 (Fla. 2001); *Auto Owners Ins. Co. v. Marzuli*, 788 So.2d 1031, 1033-34 (Fla. 2d DCA 2001); *Grant v. State*, 832 So.2d 770, 773 (Fla. 5th DCA 2002).

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Put another way, HCH cannot use the *expressio unius* canon to override the plain language of a statute. *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 122 S.Ct. 941, 956 (2002) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"); *see also Hillsborough County v. Bennett*, 167 So.2d 800, 803 (Fla. 2d DCA 1964). Nor can the canon trump the statutory interpretation of the Office of Insurance Regulation, the state agency charged with filling in any "gaps" in the statute. (Initial Br. at 21) There is no interpretive canon to support the statutory construction proffered by HCH.

C. *Jewell's* Plain Text Interpretation Gives Meaning To The Statute.

HCH argues that *Jewell's* interpretation would render Subsection 10 and its 1992 amendment meaningless. (HCH Br. at 34) HCH misreads the legislative history. The original version of Subsection 10 permitted an insurer to provide an option to use a preferred provider "at the time that medical services" were sought, but prohibited any requirement that a policyholder elect to use a preferred provider at the time they purchased a policy. (Initial Br. at 22) The 1992 amendment eliminated this prohibition and *expanded* the programs insurers can offer. Against this backdrop, the interpretation offered by HCH – that the legislature intended by the 1992 amendment to *prohibit* a certain type of contractual program – makes no

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sense. By explicitly recognizing an insurer's right to contract with providers in the first sentence of Subsection 10, the Legislature removed any doubt about whether an insurer could set up network programs such as the one used by Allstate here. Like the statute's plain text, nothing in the legislative history supports the interpretation advanced by HCH. *See Jewell*, 82 So.2d at 84.

D. By Upholding Allstate's Network Program, *Jewell* And The Court Below Properly Construed Subsection 10 In Concert With The Rest Of The PIP Statute.

The statutory construction adopted in *Jewell* and the court below interprets Subsection 10 *in pari materia* with the entirety of the PIP statute. Authorizing insurers to use negotiated fee schedules reduces the costs of insured's medical care while expanding their coverage, as well as reducing litigation over what constitutes "reasonable" expenses:

> The appellant insurers have done nothing that is inconsistent with any provisions of the no-fault law. … Any contractual arrangements the insurers have made for paying certain providers at PPO rates have in no way adversely affected the services made available to the insureds under the PIP policies.

Jewell, 862 So.2d at 86 (further explaining that network arrangement saved insured's money through lower co-payments and make more services available to the insured). This Court has mandated that courts should construe the PIP statute to give effect to the legislative purpose of providing broad PIP coverage. *Blish v. Atlanta Cas. Co.*, 736 So.2d 1151, 1155 (Fla. 1999); *Charter Oak Fire Ins. Co. v.*

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Regalado, 339 So.2d 277, 279 (Fla. 3d DCA 1976). Thus, HCH's suggestion that contracts with networks "undermine or alter" the PIP statutory scheme, "[i]n light of the actual impact on the PIP insureds who may choose to use PIP providers, ... rings hollow." *Jewell*, 862 So.2d at 86.

E. HCH And The Fifth District's Decision in *CFP* Do Not Point To Any Language In Subsection 10 Prohibiting Allstate's Network Program.

In contrast to *Jewell's* detailed reasoning, the Fifth District's decision in *Nationwide Mut. Fire Ins. Co. v. Central Florida Physiatrists, P.A.*, 851 So.2d 762, 765 (Fla. 5th DCA 2003) ("*CFP*") offered little justification for its contrary holding. Respectfully, *CFP* did not (i) identify any language in Subsection 10 prohibiting Allstate's network program, (ii) consider the interpretation of the OIR, (iii) analyze the subsection's legislative history, which is developed in *Jewell*, or (iv) show how its holding comports with the PIP statute's policy of increasing coverage for insureds. HCH's brief simply parrots *CFP's* holding without reconciling or addressing any of the infirmities in the Fifth District's decision. Unlike *CFP*, the *Jewell* and *Holy Cross* holdings correctly interpreted the statute's plain text and are supported by the OIR, the legislative history and the policies underlying the PIP statute.

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II. THE INTERPRETATION OF THE OFFICE OF INSURANCE REGULATION SUPPORTS THE PLAIN LANGUAGE CONSTRUCTION OF *JEWELL* AND THE COURT BELOW.

Like the legislative history, the interpretation of Office of Insurance Regulation reinforces the clear text of Subsection 10. Although the statute's language unambiguously supports Allstate, that does not mean, as HCH suggests (HCH Br. at 16-17), that other interpretative aids are irrelevant. Florida courts regularly rely on agency interpretations, legislative history, and similar resources to confirm an interpretation clear on the face of the statute. *E.g., 1000 Friends of Fla., Inc. v. State Dep't of Cmty. Affairs*, 824 So.2d 989, 992 (Fla. 4th DCA 2002) (interpreting text of statute and further noting that "the department's interpretation is consistent with the plain language of the statute"); *Hawkins v. Ford Motor Co.*, 748 So.2d 993, 1000 (Fla. 1999) ("In addition to consideration of the plain language…, we find that the legislative history underlying those statutory subsections supports our conclusion…."); *State v. Mark Marks, P.A.*, 698 So.2d 533, 542 (Fla. 1997) (finding "that the legislative history, like the plain language" supported the court's statutory interpretation); *Burgess v. Burgess*, 447 So.2d 220, 222 (Fla. 1984) (explaining that court's interpretive conclusions was "supported by strong policy grounds as well as by the literal statutory construction").[1]

[1] While disavowing any reliance on legislative history, HCH inconsistently points to legislative efforts to modify the PIP statute that have not made it out of committees. (Holy Cross Br. at 26 n.5; *see also* FHA/FOS Br. at 10-12) Those

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HCH's brief downplays the interpretation of the OIR, relegating the OIR's construction of the statute to a footnote (HCH Br. at 17 n.3); yet, HCH offers no legitimate reason why the Court should ignore the agency's interpretation. Long before this lawsuit, the OIR examined and approved the very type of network program and contractual arrangement being challenged here. As Daniel Sumner, a senior executive attorney for the OIR described, in reaching its conclusion that Subsection 10 permits network programs, the agency drew on its experience with the insurance code as a whole, "concepts" within the code, and analogies to other situations. (R2: 222-24) The OIR's interpretation is entitled to great deference. (Initial Br. at 24-25 (collecting cases))

III. ALLSTATE'S PAYMENTS AT CONTRACTUALLY AGREED-TO, REDUCED RATES COMPLY WITH SUBSECTIONS 1 AND 5.

HCH repeatedly (and erroneously) argues that Allstate's payment at the contractually-accepted rates violates Subsections 1 and 5, Fla. Stat. 627.736(1), (5), which require an insurer to pay a percentage of "reasonable expenses." (HCH Br. at 22, 24-25) But HCH altogether avoids the key point stressed by Allstate and

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efforts are irrelevant. As Florida courts long have recognized, a bill that has not come out of committee cannot be considered in analyzing legislative intent. *State Dep't of Public Welfare v. Melser*, 69 So.2d 347, 356 (Fla. 1954) ("With all of the known legislative tricks it is impossible to determine the intention of the Legislature by the killing of a bill in committee, by having it placed on the Calendar where it may die for insufficient time to reach it, or where it may meet its death without being voted upon by each branch of the Legislature.").

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the Second District in *Jewell*: Allstate paid any "reasonable" expenses required under Subsections 1 and 5 by paying the rates to which HCH contractually agreed. As *Jewell* explicitly held, rates a provider agrees to accept are *per se* reasonable. *Jewell*, 862 So.2d at 85-86. HCH offers no rebuttal, because there is none. The rates that HCH agreed by contract to accept are, by definition, "reasonable" under the statute.

IV. HCH HAS NO STANDING UNDER SUBSECTION 10 AND NO DAMAGES TO SUE BASED ON A PURPORTED ASSIGNMENT FROM INSUREDS.

HCH's efforts to show it has standing further reveal the errors in its position. Admitting it has no "private right of enforcement pursuant to Florida Statute subsection (10)," HCH claims to be asserting "rights … pursuant to Fla. Stat. § 627.736(1)." (HCH Br. at 35) The problem, of course, is that HCH has no rights under Subsection 1. As explained above, HCH received the amounts it contractually agreed to accept. By paying these contractual rates, Allstate necessarily paid eighty percent of the "reasonable expenses" required by Subsection 1. *Jewell*, 862 So.2d at 85-86. Thus, HCH cannot use Subsection 1 to avoid its standing problems under Subsection 10.[2]

[2] The hospital's only response is its unsupported claim that Allstate "recognized" that it paid less than required by Subsection 1. (HCH Br. at 38 n.7) This misstates the Record. To allow for entry of a final judgment, Allstate agreed only that the amount of HCH's *claimed* damages was the difference between the hospital's billed amounts and the amount Allstate paid under the network programs. Allstate

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Nor can HCH turn to purported assignments from Allstate's insureds. (HCH Br. at 35-36) HCH's status as an alleged assignee does not give it any actual, recoverable damages on which to base a claim against Allstate. Allstate's insureds paid precisely what their policies required – 20 percent of HCH's fees allowed under its Beech Street contract. That is all the insureds had to pay. HCH agreed in its contract not to balance bill insureds for anything more. (R1:129, 131-41) Because the insureds paid only the amounts they contractually owed, they have no claim against Allstate, so neither does HCH as an alleged assignee of those claims. (Initial Brief at 32-33 (collecting cases))

ANSWER BRIEF ON CROSS-APPEAL

ALLSTATE'S CONTRACTUAL NETWORK PROGRAM PROMOTES THE POLICIES BEHIND THE PIP STATUTE AND IS NOT A "SILENT PPO."

Public policy considerations also support the Allstate's interpretation (and that of the OIR). Allstate's network program benefit insureds through reduced charges for medical insurance, greater coverage, and more rapid payment through negotiated fee schedules with providers. (Initial Br. at 27-29) Obscuring these benefits, HCH and its amici claim that Allstate "concealed" key facts or "shrouded" its network program, which they label a "Silent PPO." (HCH Br. at

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in no way conceded that the hospital *actually* had any damages. Indeed, because the insureds from whom HCH claims an assignment have suffered no damages, neither has HCH.

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39-40; FHA/FOS Br. at 15-18; FCAN Br. at 11-20) The record is to the contrary. Allstate hid nothing. Allstate fully informed insureds of the program through an "800" phone number as well as mailing inserts. (Initial Br. at 5) This information allowed Allstate's insureds to make an informed decision about whether to take advantage of discounted rates through the network program. Moreover, providers were certainly on notice about their own network contracts, and would know if and when insurers paid at reduced rates based on a network contract.

HCH's (and its amici's) protestations about the "evils" of "silent PPOs" are simply inapplicable.[3] Contracts by which providers agreed to certain rates for their services are legitimate and lawful. There is nothing inherently wrongful or fraudulent. As one commentator has stated:

> While many providers have express outrage against what they have variously characterized as unethical to fraudulent behavior on the part of network organizations, the reality is that all too often the provider has signed an agreement without the proper due diligence as to the value to be received.

L. Dickerson, *Preferred Provider Organizations vs. Non-Directed Networks: A Provider Dilemma*, Federation of American Health Systems (1998). There is also nothing inherently wrongful about agreements by which medical care providers

[3] HCH is only suing as an assignee of the Allstate insureds it treated, and thus has no greater rights than its assignors. *See Mut. Of Omaha Ins. Co. v. Gold*, 795 So.2d 119, 121 (Fla. 5th DCA 2001). Those patient assignors have no interest arising from issues such as "Silent PPOs" or "steerage."

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agree to accept negotiated rates, even in the absence of patient steering requirements. *See First Health Group Corp. v. United Payours & United Providers, Inc.*, 95 F. Supp. 2d 845, 846-47, 849-50 (N.D. Ill. 2000) (explaining that a PPO "does not have a fixed definition which includes a steering requirement").

For these reasons, HCH's reliance on *HCA Health Services of Georgia, Inc. v. Employers Health Ins. Co.*, 240 F.3d 983 (11th Cir. 2001) is misplaced. *HCA* was a federal case decided under ERISA, not under Florida's PIP statute. *Id*. at 986. The Eleventh Circuit did not consider the goals or language of the Florida PIP statute – such as broadening coverage, reducing litigation, and providing for swift payment of benefits – in reaching its decision. Allstate's network contracts further each of these purposes; HCH's proposed approach, in contrast, would frustrate all of them.

Moreover, the Eleventh Circuit in *HCA* was concerned that insureds could be harmed if an insurer paid benefits at a reduced rate, only to have a provider later collect the difference between this amount and the standard rate from the insured. 240 F.3d at 1004-05. That concern is absent here because HCH agreed in its contract not to "balance bill" insureds. (R1:129, 131-141) Also unlike here, the insurer in *HCA* never informed its insureds of the negotiated fee schedule with the plaintiff provider, 240 F.3d at 999 n. 34, leading the Eleventh Circuit to question

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whether the providers received consideration. By contrast, in exchange for contractually agreed-to rates from providers like HCH, Allstate made its pool of covered insureds available to the network and provided those insureds with information about network providers. (Initial Br. at 3-4) This is ample consideration. *HCA*, in short, is both legally and factually inapposite.

Contrary to the parade of horribles concocted by HCH and its amici, Allstate's network program significantly advantages insureds: it provides insureds with an unfettered choice of providers, reduces their payments, allows for additional coverage, and promotes a swifter payment of benefits.

CONCLUSION

Allstate's interpretation of Subsection 10 is supported by the plain language of the statute, the Second District's *Jewell* opinion, the OIR's administrative interpretation, legislative history, and public policy. HCH cannot point to a single word in the text prohibiting Allstate's network program, and no applicable canons support the hospital's statutory interpretation. Furthermore, HCH cannot deny that

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striking down the network programs would harm Florida insureds to the benefit of providers, a result antithetical to the underlying policies of the PIP statute. Accordingly, the Court should affirm the Fourth District's decision.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Cross-Answer/Reply Brief of Petitioners/Cross-Respondents Allstate Insurance Company and Allstate Indemnity Company has been served by U.S. Mail this 27th day of April, 2006 upon the following attorneys:

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CERTIFICATE OF COMPLIANCE

I hereby certify that in compliance with the font requirements of Fla. R. App. P. 9.210(2), the foregoing Cross-Answer/Reply Brief of Petitioners/Cross-Respondents Allstate Insurance Company and Allstate Indemnity Company, was printed in Times New Roman 14 point font.

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