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26 HLR 891

Medicaid

Long-Term Care Providers Can Sue Illinois Over Medicaid Delays



By Mary Anne Pazanowski

Illinois must defend claims that its failure to timely process Medicaid applications and promptly provide benefits violated federal law (*Doctors Nursing & Rehab. Ctr., LLC v. Norwood*, 2017 BL 192055, N.D. Ill., No. 1:17-cv-640, 6/7/17).

Delays in processing Medicaid applications and paying benefits on behalf of eligible recipients are occurring throughout the country. These delays, often caused by state budgetary issues, present substantial problems for long-term care providers that rely on Medicaid for payment, as well as for beneficiaries who are being denied care as a result.

The U.S. District Court for the Northern District of Illinois June 7 rejected state Department of Healthcare and Family Services Director Felicia Norwood's request to dismiss the case, which involved seven complaints and over 150 long-term care facilities.

The plaintiffs, long-term care facilities and Medicaid-eligible patients, said Illinois failed to process Medicaid applications, render eligibility determinations, and promptly provide benefits, as required by federal law.

Backlog Impedes Care

"The Medicaid backlog in the State of Illinois directly impedes the ability for these facilities to care for their residents," Chad Bogar, managing partner and CEO for sb2 inc., Harrisburg, Pa., said in a statement provided to Bloomberg BNA.

"This ruling is an acknowledgment that the facilities are representing their residents' interests in trying to resolve the issue and protect quality of care," he said. sb2 inc. attorney Katie Z. Van Lake represented the plaintiffs.

The problem isn't new, Bogar said. As far back as the 1980s, a federal appeals court ordered Illinois to pay requests for Medicaid benefits that had been delayed. The state's current backlog of about 7,000 cases goes back many years, he said.

Additionally, Illinois's "failure to pass a budget for the last three years is being pushed downstream in the form of a failure to comply with Centers for Medicare & Medicaid Services regulations that govern every aspect of this issue," Bogar said.

"This puts elderly residents at risk of losing their ability to stay at a facility and receive care," he said. "It also places an unnecessary financial burden on the facilities that are trying to maintain a high quality of care for these residents."

Block Grant Program?

Bogar wouldn't comment directly on congressional Republicans' reported plans to modify the Medicaid program under their Affordable Care Act repeal-and-replace legislation, saying he hasn't seen a final proposal.

He did say, however, that "it's hard to know" if one widely reported possibility, a block grant program, would work.

"If states can't follow federal rules now, how can they be expected" to meet Medicaid recipients' and long-term care providers' needs without CMS supervision, he asked.

Snapshot

- Sovereign immunity doesn't bar suit against state because it sought prospective relief
- State delays in processing Medicaid applications create substantial problems for long-term care providers, beneficiaries

Bogar's firm, sb2 inc, has offices throughout the U.S. and represents over 2,800 long-term care providers and health-care associations with respect to Medicare/Medicaid eligibility and reimbursement issues and related regulatory matters.

No Immunity

In its decision, the court said the long-term care providers' claims weren't barred by the 11th Amendment and the doctrine of sovereign immunity because the plaintiffs were seeking only prospective relief to ensure the state's future compliance with the law.

The 11th Amendment bars citizens from suing their states, but that bar isn't complete, the court said. The provision doesn't bar suits for prospective injunctive relief to stop violations of federal law.

A court can't order a state to pay damages, but it can require a state officer to prospectively comply with federal law, even if compliance will require it to spend money, the court said.

Long-Term Providers OK

The court also said the long-term care provider plaintiffs properly were in the suit because the Medicaid beneficiaries authorized them to bring the claims on their behalf.

The Medicaid Act doesn't expressly say a Medicaid beneficiary can authorize another to file a lawsuit on his or her behalf, the court said. But the law and its regulations also don't limit a beneficiary's power to assign authority to a representative.

The court interpreted the regulation allowing a beneficiary to choose to authorize a representative to handle "all other matters with the agency" as permitting a beneficiary in an "unusual" case like this one to bring suit on the beneficiary's behalf.

Finally, the court said the Medicaid Act provides a private right of action for failing to provide benefits promptly. The law's "reasonable promptness" provision contains rights-creating language giving its beneficiaries the right to bring a lawsuit under 42 U.S.C. § 1983.

Consent Orders

This case, along with a June 7 order issued by Judge Joan H. Lefkow, also of the Northern District of Illinois, demonstrates the federal court's "exasperation" with Illinois's failure to meet its Medicaid obligations, Bogar said.

Lefkow ordered the state and Medicaid beneficiaries to continue negotiating to achieve substantial compliance with consent orders requiring continued payment of Medicaid benefits that would have been paid but for the state's budget impasse.

Lefkow said the impasse has continued for two years, during which time the state's comptroller funded some obligations, like the state's payroll, at 100 percent, while funding the consent decree obligations at a "sharply reduced level."

"[M]inimally funding the obligations of the decrees while fully funding other obligations fails to comply not only with the consent decrees," but with previous court orders, Lefkow said.

A spokeswoman for the Illinois Attorney General's Office declined to comment.

Judge Elaine E. Bucklo wrote the opinion.

Brian Franklin Kolp, of the Illinois Attorney General's Office represented the state.

To contact the reporter on this story: Mary Anne Pazanowski in Washington at mpazanowski@bna.com

To contact the editor responsible for this story: Brian Broderick at bbroderick@bna.com

For More Information

The decision is at <http://src.bna.com/pIs>. Lefkow's order is at <http://src.bna.com/pI1>.