

Medicaid

Ill. Must Submit Daily Rate to Medicaid for OK, Complaint Says

The federal Medicaid agency should be given a chance to determine if Illinois's daily rate for nursing home patients is too low, a new complaint says.

Generations Health Care Network LLC, joined by several other owner-operators of skilled nursing facilities in Illinois, Jan. 12 sued state Department of Health-care and Family Services Director Felicia F. Norwood to force her to submit the state's nursing home payment rates to the Centers for Medicare & Medicaid Services. The complaint filed in the U.S. District Court for the Northern District of Illinois alleged the state had, for many years, ducked its obligation under the Medicaid Act to submit its daily reimbursement rates for the CMS's approval. The state also violated the Medicaid Act when it failed to establish procedures to make public the methodology it used in setting the payment rates, the complaint said.

Illinois's daily rates for nursing home payments are among the lowest in the nation, Chadwick O. Bogar told Bloomberg Law. Bogar is the founder and CEO of sb2 Inc., a nationwide law firm based in Harrisburg, Pa., which represents the nursing homes in this lawsuit. This is the first lawsuit in which long-term care facilities have challenged a state's failure to obtain CMS approval for its daily rate reimbursements, he said.

Rate Freeze Long-term care facilities in Illinois receive a per diem, or per day, reimbursement for Medicaid-related costs, according to the complaint. It is a single, comprehensive payment per day, per resident, established pursuant to a reimbursement rate calcu-

lated by adding the support cost, the nursing cost, and the capital cost.

In 1994, Illinois placed a freeze on the methodology it used to determine the reimbursement rates for long-term care facilities, the complaint said. Exceptions have been made based on specific changes in facility costs, and amended rates have been proposed. The state, however, has either delayed seeking CMS approval of the amendments or failed to submit them to the CMS for review, the complaint said.

The complaint alleged the state never submitted to the CMS for approval an annual Medicaid rate payment methodology, nor any data showing its proposed rates were reasonable and adequate to meet the providers' costs. Neither the facilities nor any other interested parties were given notice or an opportunity to review and comment on the methodology and data, the complaint said. The quarterly published rates haven't been submitted to the CMS for approval, it said.

The result, Bogar said, is that these facilities have been unable to improve employees' salary and benefits. He added that Illinois's budgetary issues, which have had an impact on the state's Medicaid program, were irrelevant to the lawsuit.

The facilities are seeking only a declaratory judgment that would require the state to comply with the Medicaid regulations, Bogar said.

The case is *Generations Health Care Network LLC v. Norwood*, N.D. Ill., No. 18-267, filed 1/12/18.

BY MARY ANNE PAZANOWSKI

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

To contact the editor responsible for this story: Peyton M. Sturges at psturges@bloomberglaw.com

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