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REIMBURSEMENT WARS: SEEKING HELP FROM THE COURTS

Long-term care facilities battle state over Medicaid payments

By MICHAEL KURS and BONNIE L. HEIPLE

In January of this year, an association comprised of Connecticut for-profit and not-for-profit facilities that provide long-term nursing, sub-acute and rehabilitative services filed a federal lawsuit claiming Medicaid rates for such care are inadequate and illegally set. The suit seeks to invalidate a curb on rate increases and to repair a Medicaid rate-setting methodology that the association calls "broken."

The lawsuit, *Connecticut Association of Health Care Facilities Inc. (CAHCF) v. Rell,* highlights a battle common to multiple segments of our health-care system. The battle involves efforts by payers to curtail the expenses associated with necessary care and commensurate efforts by health-care providers to recover adequate reimbursement for the care they provide. The State of Connecticut is only one of a variety of health care payers that can expect to find themselves in court fighting over the amount they pay for care and the circumstances under which payment will be made for services rendered. With health care expenditure in the United States exceeding $2.3 trillion annually, health-care reimbursement wars, of this or another sort, are sure to proliferate in the years ahead.

In fiscal year 2009, Medicaid long-term care expenses accounted for some 13 percent of Connecticut's budget and represented more than half of the entire state budget for Medicaid. Long-term care Medicaid expenditures are in excess of $2.4 billion in the state. Much of that long-term care is provided in approximately 238 licensed nursing facilities. There are some 28,000 nursing facilities beds in Connecticut. In FY 2009 approximately, 68 percent of all nursing facility days were paid for by Medicaid. Medicare accounted for approximately 14 percent of payments, while private pay accounted for approximately 15 percent.

MICHAEL KURS

BONNIE L. HEIPLE

The Connecticut Association of Health Care Facilities Inc. claims that amendments to Connecticut's methodology for setting payment rates cut "already deficient Medicaid payments by almost 10 percent in violation of federal law." CAHCF has moved for a preliminary injunction to enjoin Gov. M. Jodi Rell and the commissioner of the Department of Social Services, Michael Starkowski, from implementing a "Stop Gain" provision of state law that has resulted in a rate freeze for nursing facilities servicing Medicaid beneficiaries. CAHCF says the "Stop Gain" provision will cost Connecticut nursing facilities more than $200 million in the coming fiscal year.

'Struggling To Survive'

CAHCF's court filings describe a long-term care industry in Connecticut "already struggling to survive." Facility bankruptcies and receiverships have become commonplace in Connecticut. A 2001 report cited in CAHCF's preliminary injunction memorandum identifies more than 20 percent of facilities as being bankrupt or in receivership since 1999. Citing a presentation by Commissioner Starkowski, CAHCF reports that 22 facilities closed between 2002 and late 2009 and an additional 16 were in receivership or bankruptcy in late 2009. CAHCF maintains that the state has failed to assure that Medicaid payments are "consistent with efficiency, quality of care, and equality of access" and claims that the Supremacy Clause

Michael Kurs is a Hartford-based partner at Pullman & Comley LLC whose practice includes health law and litigation, including litigation of reimbursement disputes. Bonnie L. Heiple is also a Hartford-based attorney in the same firm whose practice includes health-care matters. They can be reached at mkurs@pullcom.com and bheiple@pullcom.com.

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and the Medicaid Act are grounds for the injunctive relief it seeks.

The state's lawyers have moved to dismiss the lawsuit on Eleventh Amendment immunity grounds and also argue that CAHCF has failed to state a valid cause of action. Their brief explains the "Stop Gain" provision as one response to a state budget deficit of more than $500 million in this fiscal year. They explain that the state's economic circumstances have resulted in cuts and curtailments in many programs and that federal law allows the state to exercise considerable discretion in establishing its Medicaid reimbursement methodology. They maintain that changes in Medicaid laws have purposefully sought to preclude court involvement in the review of the adequacy of Medicaid rates.

As health-care reformers struggle to control costs, lawsuits over reimbursement dollars will likely proliferate. Health-care providers often have a limited say in the amount of payment they will receive for services — the government and other payers often set payment rates for them. Sometimes providers can lobby their legislators for increased rates. Sometimes they can seek higher rates through government administrative processes. Sometimes they can negotiate better rates with private payers. Often those strategies fail and lawsuits over reimbursement follow. CAHCF's case presents an opportunity to see how useful the courts might be to providers in the future as they seek help with their government-imposed Medicaid rates. ■