



HLB Sues California on Behalf of Hospitals Challenges CMS Approval of Draconian Medi-Cal Rate Cuts

On November 1, 2011 Hooper, Lundy & Bookman ("HLB") filed a complaint in federal court on behalf of the California Hospital Association ("CHA") in an attempt to halt an untenable cut in reimbursement to hospitals that provide skilled nursing care to the state's most vulnerable populations.

"The state of California is preparing to unleash a reduction of unprecedented magnitude in the rates that hospitals are compensated for providing skilled nursing care to Medi-Cal beneficiaries" said Lloyd Bookman, lead attorney representing CHA. The rate cut, which will drop rates by between 23-25% percent from current payment levels, was enacted by the State Legislature, "all in the name of budgetary savings." The payment reduction, which was approved by the Centers for Medicare and Medicaid Services ("CMS") in late October, effectively rolls back reimbursement to 2008 levels, less an additional 10 percent, for hospital skilled nursing units, call distinct part nursing facilities (DP/NFs).

CMS approved this draconian cut in reimbursement despite numerous state and federal court rulings finding such that similar cuts were enacted and implemented by California in violation federal Medicaid law and despite the state's wholly unconvincing argument showing that that the rate reduction will not adversely affect access to hospital skilled nursing care for Medi-Cal beneficiaries.

"This massive payment reduction will almost immediately threaten the ability of many hospitals to continue to operate skilled nursing units," Bookman said. "When these units are forced to close, it will, at worst, create significant gaps in access to such services for Medi-Cal beneficiaries, particularly those residing in already medically underserved, rural areas. At best, the cut will cause significant delay in patients obtaining needed services." Bookman further predicted that patients will be forced to remain in costly acute care settings, or transferred to freestanding facilities with less capacity to handle the kind of complex patients that are typically treated in DP/NFs.

Primary Allegations

Allegations in the complaint filed by HLB include:

- The rate cut results in hospitals being improperly deprived of their privately enforceable right to be free of government-imposed takings of private

property without just compensation that is guaranteed under the U. S. Constitution and the California Constitution.

- The rate reduction violates federal Medicaid law in that the rate reduction will effectively prevent many Medi-Cal beneficiaries from obtaining needed skilled nursing care with reasonable promptness.
- The rate reduction will effectively dictate that skilled nursing care is being covered and reimbursed under Medi-Cal in a manner that is not in the best interests of patients for several reasons, including, for example:
 - Closure or reduction in services by DP/NFs will often require patients to be placed in facilities that are very distant from patient and family residences.
- Neither the California Legislature nor the Department of Health Care Services adequately considered the factors of efficiency, economy, quality of care and access to services prior to enacting and/or moving seeking to implement the rate reduction, as required by federal Medicaid law.
- CMS did not follow the binding rulings of the U.S. Ninth Circuit Court of Appeals in evaluating and ultimately approving the rate cut.
- The rates as reduced are not reasonably related to provider costs, but on average, reimburse only about 60% of hospital costs.

Based on the allegations in the complaint, CHA will seek a preliminary injunctive relief, which will prohibit the State from applying the rate reduction to DP/NF providers. The federal district court is expected to hear argument on the CHA's injunction request on December 19, 2011.

In addition to cuts approved for DP/NFs, CMS also approved rate reductions for several other services, including a 10 percent reduction from current Medi-Cal reimbursement for physicians, pharmacies and pediatric dental care.

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