



Hooper, Lundy & Bookman Wins Ruling on Behalf of California Hospitals Court Stops State from Imposing Draconian Medi-Cal Rate Cuts

(December 29, 2011)—In a case filed by Hooper, Lundy & Bookman, PC on behalf of the California Hospital Association, the federal district court for the Central District of California late yesterday issued a preliminary injunction prohibiting California regulators from implementing a severe rate reduction to hospitals providing skilled nursing care services to Medi-Cal beneficiaries. The complaint was filed on November 1, 2011.

“From a health care services perspective, this ruling is important because the cuts very likely would have caused many rural facilities, including entire hospitals, to close,” said Lloyd Bookman, lead attorney in the case. “From a legal perspective, this ruling is significant because the court stopped a rate cut that had been approved by federal Medicaid regulators.”

By issuing a preliminary injunction in the case, the court has indicated that the California Hospital Association’s case has a high likelihood of succeeding.

“Although keenly aware of the State’s fiscal difficulties, the Court believes that the balance of equities and the public interest strongly favor the issuance of an injunction,” U.S. District Court Judge Christina Snyder wrote in her ruling. “[T]he State’s fiscal crisis does not outweigh the serious irreparable injury plaintiffs would suffer absent the issuance of an injunction.”

Background

At issue in the case is the recent approval by the Centers for Medicare and Medicaid Services (CMS) of a proposed State Plan Amendment, requesting unprecedented cuts in Medi-Cal reimbursement, in order to help fill the state’s budget gap. CMS approved this draconian cut in reimbursement despite numerous state and federal court rulings finding that such cuts violate federal Medicaid law and despite the state’s inability to prove that such cuts will not adversely affect access to hospital skilled nursing care for Medi-Cal beneficiaries.

“Such a massive payment reduction would almost immediately threaten the ability of many hospitals to continue to operate skilled nursing units,” Bookman said. “If 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 would cause significant delay in patients obtaining needed services.” Bookman further predicted that patients would be forced to remain in acute care settings, or transferred to less qualified freestanding facilities.

Charges HLB made in the complaint include:

- The rate cuts result 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

- The rate reduction is invalid because it 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. Hospital units, known as distinct part/nursing facilities (DP/NFs) often furnish a higher level of care than freestanding nursing facilities and are often the only source of higher level skilled nursing care in their communities. DP/NFs will be forced to close and/or restrict Medi-Cal services, forcing patients to be placed in freestanding nursing facilities.
- Neither the California Legislature nor the Department of Health Care Services considered the factors of efficiency, economy, quality of care and access to services prior to authorizing the rate reduction, as required by federal Medicaid law.
- The rate cuts will in fact deprive Medi-Cal patients of access to skilled nursing care by causing many facilities to close or withdraw from Medi-Cal.
- CMS's approval of the rate cuts was arbitrary and capricious because it failed to ensure that federal law's requirements that rates be consistent with quality and access were met.

For additional information, please contact Lloyd Bookman or Jordan Keville in Los Angeles at 310.551.8111 or Craig Cannizzo or Felicia Sze in San Francisco at 415.875.8500.

About Hooper, Lundy & Bookman, PC: HLB is the largest law practice in the country dedicated solely to representing health care providers in complex litigation, regulatory and transactional matters. With clients in all 50 states and offices in Los Angeles, San Francisco, San Diego, and Washington, D.C., we serve a broad array of health care providers, ranging from the largest national health care organizations, to community hospitals and other providers. For more information, visit the firm's website at www.health-law.com.

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