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## Medicaid

### **Health Center Wins Texas Medicaid Dispute Over CMS Approval of Payment Scheme**

**T**exas can't avoid its obligation to supplement the Medicaid managed care rates for community health centers that cater to underserved populations, a federal court ruled May 3 (*Legacy Cmty. Health Servs., Inc. v. Janek*, 2016 BL 141382, S.D. Tex., No. 4:15-cv-25, 5/3/16).

The court's decision blocks the provision of the state's Medicaid plan that had forced the managed care organizations (MCOs) to pay federally qualified health centers a "per visit" payment for Medicaid-covered patients that is frequently higher than the negotiated rates that the MCOs paid to all other providers.

The court ruled that the Medicaid Act required the state to allow the MCOs to pay the centers the same negotiated rates they pay to all providers with the state making up the difference by providing "wraparound"—or supplemental—payments.

The court's decision is the first to address a state's delegation of responsibility to an MCO to pay the full "per visit" amount to the health centers and attempt to eliminate the wraparound payments. The requirement was only included in the state's contracts with MCOs until recently when the state submitted a plan amendment to the Centers for Medicare & Medicaid Services making the requirement official across the entire Medicaid program.

Despite the approval of that state plan amendment (SPA) by the CMS, the court still found that the method of forcing the MCOs to make the payments violated the Medicaid Act.

"We are currently evaluating our options," a spokeswoman for the Texas attorney general's office told Bloomberg BNA when reached for comment on the decision. Presumably those options include an appeal of the decision to the U.S. Court of Appeals for the Fifth Circuit.

Attorneys for the community health centers declined Bloomberg BNA's requests for comment because the litigation was ongoing.

**Payment Method Violated Federal Law.** The case was brought by Legacy Community Health Services, a Houston-area federally qualified health center (FQHC). A FQHC is a health center designated by the CMS to re-

ceive enhanced Medicaid payment for its Medicaid-eligible patients and federal grants under the Public Health Services Act to treat uninsured patients.

Under the Medicaid Act, centers that have been designated as FQHCs are guaranteed to receive their full "per visit" Medicaid payments and can't just be paid the negotiated—and usually lower—rates that MCOs pay other non-qualified providers under negotiated contracts. Instead, the statute requires the state to come behind and make up the difference with what is termed a wraparound payment.

In 2011, Texas implemented a new approach that required that the MCOs make the full "per visit" payments to the FQHCs and said that the state would no longer make wraparound payments.

According to the court, Legacy's "per visit" payments grew much faster than could be covered by the state's payments to one of the MCOs and the organization decided to terminate its contract with Legacy, placing all of the Medicaid patients who subscribed to that MCO, Texas Children's Health Plan, out-of-network for the health center.

Legacy sued the state, claiming that the refusal to pay a wraparound payment violated the Medicaid Act and challenging the state's apparent refusal to guarantee payment of out-of-network rates after the contract was terminated.

The court ruled in Legacy's favor on the wraparound payment issue, reserving judgment on the out-of-network issue for later.

According to the court, the Medicaid statute is clear in that a state cannot force an MCO to pay the full rate and must instead wait to see what the negotiated rate turns out to be. If the negotiated rate meets the "per visit" rate, no wraparound payment is required. However, if the MCO negotiates a rate lower than the "per visit" rate, a state is required by federal law to make up the difference.

"This is the first court decision that addresses a situation where a state completely punted its obligation to provide the wraparound payments," Jose Camacho, executive director of the Texas Association of Community Health Centers, told Bloomberg BNA. "What this court has ruled is that you can't do that," he said.

He said he hoped the decision would serve "as a starting point to come together with the state and the MCOs they contract with to safeguard patient access," he added.

**CMS Approved SPA.** One element of the case which drew attention of attorneys who advise providers who treat Medicaid patients was that the state had included this payment method in a SPA that was approved by the CMS.

Addressing this point, the court accorded that approval no deference saying, that it “cannot explain why CMS would have approved of a state plan that CMS had declared inconsistent with the Medicaid Act in its 1998 guidance letters, and that CMS would again declare impermissible just two months after rendering its approval.”

Harvey Tettlebaum, a partner with Husch Blackwell in Jefferson City, Mo., told Bloomberg BNA that the agency’s approval was a symptom of a larger problem with the CMS approval process.

“This opinion exposes the state plan approval process as lacking true oversight where, as here, the CMS, rather than determining whether the SPA complies with Federal law and regulations, evaluates the SPA against CMS’s own fiscal targets, always approving what costs CMS less,” he said in an e-mail.

“While the court in this case describes a state, Texas, that has apparently been very aggressive in trying to

off-load its risk and responsibilities under the Medicaid Act to the MCOs, even a cursory review of the practices of other states which have adopted a Medicaid managed care model for reimbursing all provider services shows that Texas is not alone in that regard,” he added.

The court’s opinion mentions a report by the National Association of Community Health Centers that cites five other states that have similar payment methods for Medicaid. Those states are Colorado, Connecticut, Massachusetts, Mississippi and Delaware.

The report mentions three other states—New Jersey, North Carolina and Tennessee—that are considering the change.

Legacy was represented by Feldesman Tucker Leifer Fidell and Collins, Edmonds, Schlather & Tower PLLC. The executive director of the Texas Health and Human Services Commission was represented by the Office of the Texas Attorney General.

By MATTHEW LOUGHRAN

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*The court’s opinion is at <http://src.bna.com/eHO>*

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