

July 24, 2015

Medicaid Litigation (Memisovski) Update #2 – Order For Medicaid Payments To Providers & MCEs Serving Children in Cook County

On July 23 federal Judge Joan Lefkow heard arguments on a request to require the state to continue to make all Medicaid payments for all health care services provided to Medicaid beneficiaries who reside in Cook County. Based on those arguments, the attorneys for the Plaintiffs and the Attorney General's Office have agreed to an Order, which has been entered by the Court. In general, it will require payments to be made to hospitals, other providers and MCEs that serve child Medicaid beneficiaries residing in Cook County.

This action was brought by the Sargent Shriver National Center on Poverty Law (and Co-Counsel) to enforce the 2005 consent decree in *Memisovski v. Maram*. That consent decree requires the State to comply with the federal Medicaid Act's requirements related to access to health care services for child Medicaid beneficiaries in Cook County. During the hearing, Judge Lefkow stated that payment is implicit in the consent decree that she signed in *Memisovski v. Maram*.

In short, the Order and the intent behind it is that the State shall make all Medicaid payments (for services provided to adults as well as children) to providers serving child Medicaid beneficiaries who reside in Cook County, including capitated payments to managed care entities with such enrollees, that would have been paid in the absence of the budget impasse on July 1, 2015, and to continue to make timely Medicaid payments until the budget impasse is resolved.

Based on statements by the Judge during the hearing and discussions with the attorneys from the Shriver Center, we understand that key requirements under the Order are:

- Payments are to be made for services provided by Medicaid providers serving children who are Medicaid beneficiaries who reside in Cook County. Since the plaintiff class in *Memisovski* is children (persons under age 18) in Cook County, who are eligible for Medicaid, the relief is limited to those plaintiffs. This means that only providers who serve child Medicaid beneficiaries who reside in Cook County are covered by the Order. However, a hospital that serves Medicaid children who reside in Cook County would be required to have all of its Medicaid payments – for adult and child services – continue until the budget impasse is resolved.
- For providers covered under the order, the State is required to make all Medicaid payments that would have been paid in the absence of the budget impasse. For hospitals, this means that payments based on claims, supplemental transitional payments under rate reform, and access payments under the hospital assessment program (including the ACA payments) would be paid.
- The State is required to make capitated payments to managed care entities that have enrollees who are children who are Medicaid beneficiaries that reside in Cook County. So, those MCEs should then continue to pay providers. Also, such capitated payments would include the capitated amounts that are used by MCEs to assure access to hospital services (known as the MCO-HAP program.)
- The State is required to continue to make timely and scheduled Medicaid payments until the budget impasse is resolved. Given the importance of preserving access to health care services, we hope the State will act on an expedited basis to issue the required payments that have already been missed, especially to hospitals that are facing serious financial pressure that might jeopardize access to services.

Unfortunately, this ruling is limited to providers that serve child Medicaid beneficiaries in Cook County. So, it does not apply to

hospitals or other providers (e.g., nursing homes) that have not provided services to Cook County children covered by Medicaid. It is not clear at this time whether the state will agree to apply this ruling statewide and to extend it to all Medicaid providers. If the Administration does not do so, it is anticipated that the Sargent Shriver National Center on Poverty Law will take further legal action to achieve that outcome.

IHA will be contacting HFS to ask its plans for implementing the Order, e.g., timing, etc. As we obtain more information, we will update you.

While there remains much work to do to achieve comprehensive statewide relief, and a reasonable and workable final FY 16 state budget, this emergency court order is an important first step to preserve access to care for Illinoisans. IHA greatly appreciates the actions taken by the Shriver Center, under the leadership of John Bouman, its President, along with their Co-Counsel, on this matter. It should also be noted that IHA, along with several other provider associations, worked collaboratively to provide support to the Shriver legal team on this matter. It truly was a team effort by many key stakeholders.

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