

June 30, 2017

## Medicaid Litigation Update #6 – Court Orders Timely Medicaid Payments

On June 30, 2017, Federal District Court Judge Joan Lefkow ordered the State to make Medicaid payments on a more timely basis to assure access to care for Medicaid beneficiaries.

Specifically, the court order provides that:

- The State is to increase Medicaid payments to \$586 million per month for vouchers submitted after June 30, 2017 on behalf of providers, including MCOs;
- In addition, in FY 2018 the State is to make additional Medicaid payments to reduce the backlog of Medicaid payments by \$2 billion by the end of the fiscal year. The Comptroller may sequence the payments based on available monthly revenue, with the goal to end FY 2018 with a backlog that is as close as possible to the backlog that was in place in FY 2015;
- The monthly payments are intended to be reimbursed at approximately 50% by federal Medicaid matching funds;
- In making such payments, the State shall, in consultation with plaintiffs' attorneys, prioritize appropriate preference to "Safety Net Hospitals" and other providers most crucial to affording the plaintiff class members' access to federally mandated healthcare services; and
- The State shall file a monthly report with the court reflecting payments made in compliance with this order.

In reaching this conclusion, the court cited the testimony of numerous MCOs, physicians, clinics, hospitals and other providers that the failure to adequately fund the Medicaid program was jeopardizing access to care for beneficiaries. The court stated:

"In order to rectify the funding failures and the problems they have created as detailed above, and to restore sufficient, federally-mandated access to health care, the State must fully fund the Medicaid program and timely pay claims submitted in the ordinary course of business. In addition, the State must pay a significant portion of the backlog of bills over a reasonable period of time." *Memisovski, June 30, 2017 Order, p. 7.*

The \$586 million that the court ordered to be paid monthly, beginning in July 2017, is the estimated amount of the monthly Medicaid liability from State general revenue funds. The court notes that an estimated aggregate amount of \$13.36 billion has been paid thus far in FY 2017 for Medicaid, with about \$4.5 billion coming from general revenue funds. Despite those payments, as of June 20, 2017, the Comptroller estimated there is a backlog of \$4.14 billion in Medicaid bills, of which \$3.1 billion is owed to MCOs.

In addressing the State's argument that it does not have sufficient funds to meet its core priority obligations, the court stated:

"Defendants have favored what they have determined to be core priority over their obligations under this court's orders and decrees. Other than the State's debt service obligations which must be met in order to avoid default, a consequence that all parties and the court agree should be avoided, defendants have not demonstrated a basis in law or fact for the choices they have made, which have resulted in sacrificing compliance with the laws of the United States as embodied in the consent decrees." *Memisovski, June 30, 2017 Order, p. 9.*

This court order will likely increase pressure on the General Assembly and the Governor to reach an agreement on state budget. Under the order, it would appear that Medicaid payments are to be treated at a similar priority to the State's debt service obligations in the allocation of the State's limited funds. This means that there will be less funds available to meet other

high priority demands, such as pensions, education and employee salaries.

It is not known at this time whether the State intends to appeal this order.

This order results from the ongoing litigation to enforce the *Memisovski* and *Beeks* consent decrees. IHA continues to express its deep appreciation to the Sargent Shriver National Center on Poverty Law, the Legal Council for Health Justice and Goldberg, Kohn, for their zealous advocacy to assure access to health care for Medicaid beneficiaries.

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