

August 12, 2015

#### Medicaid Litigation Update #5 – House Revenue Committee Hearing – Timing of Payments

On August 12, 2015, the Illinois House of Representatives Revenue Committee heard testimony from attorneys for the Rauner Administration on its plans to issue payments, despite the state budget impasse, to comply with several consent decrees that have been entered by Federal courts. In particular, they discussed the issuance of Medicaid payments under the *Memisovski* and *Beeks* consent decrees which cover Medicaid payments to hospitals.

The attorneys for the Administration made the following statements to the Committee:

- The Administration will make payments to all providers for Medicaid services statewide, including services provided to children and adults.
- All payments for all hospital services will be made, including but not limited to:
  - Claims based payments under the fee-for-service system; and
  - Hospital supplemental payments, including the assessment payments, transitional supplemental payments under rate reform, and the ACA access payments.
- Care coordination fees to ACEs and CCEs will be paid.
- Capitated amounts to MCOs, including the capitated amounts to assure access to hospital services under the MCO-HAP program, will be paid.
- These payments will be made “in the next week or two”. The Administration attorneys stated that the Department of Healthcare and Family Services (HFS) is working on processing these payments and some could be issued sooner.
- With respect to the Medicaid Facilitation and Utilization Payments that went to five hospitals that were eliminated by emergency rule as of July 1, 2015, the Administration attorneys stated that HFS will make all payments that are required by the consent decrees. This statement suggests that the Administration does not believe that these payments are required to be made.

Dan Lesser, an attorney with the Sargent Shriver Center on National Poverty Law, which recently brought the actions in Federal court to require such payments to be made, also testified before the Committee. Mr. Lesser explained to the Committee that on August 5, the Attorney General's Office advised Federal district court Judge Joan Lefkowitz that the Rauner Administration had decided to pay all Medicaid providers statewide during the budget impasse for services provided to all Medicaid beneficiaries, including children and adults, and that the hospital supplemental payments for the month of July would be issued by August 14.

Mr. Lesser also stated that based on the promises made to the Judge in open court by the Attorney General's Office, the court entered an order continuing the two motions that had been filed by the Shriver Center for two weeks, until August 19, to monitor compliance.

The Shriver Center will be back in court on August 19. If Medicaid payments are not being issued by that time, it is anticipated that the Shriver Center will be asking the Court to take action to require the Administration to issue such payments. To support the Shriver Center's litigation efforts, IHA is monitoring whether Medicaid payments are being processed and issued. In particular, we will be monitoring to determine whether the July supplemental payments are made to hospitals by the close of business on Friday, August

The statements by the Administration's attorneys that the Administration will begin issuing Medicaid payments within one to two weeks is helpful. However, we remain very concerned that for hospitals dependent on state revenues for operations – safety net hospitals, rural and critical access hospitals – time is growing short. Hospitals should note that until a hospital receives its hospital assessment payment, the hospital is not obligated to pay its assessment (tax) to the State.

IHA appreciates the members of the House Revenue Committee for holding this hearing and for the many thoughtful questions and comments offered by legislators from both sides of the aisle. IHA also wishes to continue to express its appreciation for the the actions taken by the Shriver Center, under the leadership of John Bouman, its President, along with their Co-Counsel, on this matter.

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