

## Medicaid

### Nursing Home Can Fight Medicaid Agency's Refusal to Aid Residents

A nursing home can dispute a state Medicaid agency's refusal to pick up the tab for patients unable to pay their monthly allotment because their Social Security checks were stolen.

Westminster Nursing Center, doing business in Taylorsville, N.C., as Valley Nursing Center, Nov. 22 received the go-ahead from the U.S. District Court for the Eastern District of North Carolina to sue the state to recover payments on behalf of residents who assigned it their right to receive Medicaid benefits. The court also said defendant N.C. Department of Health and Human Services improperly denied requests that it pay the patients' bills because the regulation the N.C. HHS cited to justify its decision hadn't received approval from the federal Centers for Medicare & Medicaid Services (*Westminster Nursing Ctr. v. Cohen*, 2017 BL 420185, E.D.N.C., No. 5:17-cv-96, 11/22/17).

The decision may expand the income stream for nursing facilities, as it is the first to recognize their independent right to sue a state agency based on an assignment of Medicaid payments, according to the plaintiff's attorney, Chadwick Bogar, of sb2 Inc. in Harrisburg, Pa. The court's determination that states can't enforce plan amendments that haven't received federal CMS approval also is unique, he told Bloomberg Law.

A spokeswoman for the North Carolina Department of Justice, which represented the N.C. HHS, told Bloomberg Law the "office is reviewing the decision and working to determine next steps."

**Patient Liability** Under the Medicaid Act and its implementing regulations, Medicaid recipients undergoing long-term care at nursing homes must use part of their income to pay for the cost of their care. This payment is known as the "patient monthly liability."

There was a delay in payment from several Westminster residents who allegedly were victims of a fraud in

which a third party intercepted their Social Security payments. The residents applied to the N.C. HHS for a deviation in their monthly payment liability. The agency denied the deviations.

Westminster had standing to challenge the denial under the Medical Assistance and Nursing Facility Services Mandate, the court said. Under this Medicaid Act provision, a state must make medical assistance available to all qualifying individuals.

The regulations implementing the provision allow states to reduce payments for long-term nursing care if the resident has an independent income. The state, however, may not consider as income amounts set aside for other purposes, such as other necessary medical expenses.

The CMS regulations don't specify whether an unpaid patient monthly liability qualifies as a necessary medical expense, but North Carolina's regulations says the state won't consider a monthly liability shortfall as a type of necessary medical expense that can be deducted from the patient's monthly liability.

North Carolina's regulation, however, hadn't been approved by the CMS. When the state decided the nursing home's claims on the basis of that rule, its decision was invalid, the court said. Bogar called that decision "huge," and said he has other claims pending in Arizona and Illinois based on state decisions made under regulations that similarly haven't been approved by the CMS.

Judge Louise W. Flanagan wrote the opinion.

sb2 Inc. represented the nursing home. The North Carolina Department of Justice represented the state HHS.

By MARY ANNE PAZANOWSKI

To contact the reporter on this story: Mary Anne Pazanowski in Washington at [mpazanowski@bloomberglaw.com](mailto:mpazanowski@bloomberglaw.com)

To contact the editor responsible for this story: Peyton M. Sturges at [psturges@bloomberglaw.com](mailto:psturges@bloomberglaw.com)

The opinion is at <http://src.bna.com/utU>.

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