

## Medicaid

### Illinois Medicaid Agency Must Relieve Processing, Pay Backlog

Illinois's Department of Healthcare and Family Services must comply with federal timeliness standards when processing Medicaid applications and providing Medicaid benefits (*Doctors Nursing & Rehab. Ctr., LLC v. Norwood*, 2017 BL 309270, N.D. Ill., No. 1:16-cv-10255, 9/1/17).

Delays in processing Medicaid applications and paying benefits on behalf of eligible recipients are occurring throughout the country and have been especially acute in Illinois. The delays there, caused by the state's multiyear failure to pass a budget, present substantial problems for long-term care providers that rely on Medicaid for payment, as well as for beneficiaries who risk losing care as a result.

The U.S. District Court for the Northern District of Illinois Sept. 1 ordered the state's Medicaid agency to process applications and pay benefits with reasonable promptness, as required by the federal Medicaid law. That requirement is violated when an application has been pending for more than 90 days or a claim goes unpaid for more than 12 months, the court said.

The plaintiffs, a group of Medicaid-eligible individuals and long-term care facilities that care for them, provided enough evidence to show they are likely to succeed on their claims that the agency violated the federal standards, the court said in granting the pretrial relief. The plaintiffs also produced evidence they would suffer irreparable harm if the court denied their motion for preliminary relief, as several patients had outstanding balances, and the facilities said they couldn't continue caring for the patients without payment.

The court added the public has an interest in ensuring that Medicaid-eligible patients promptly receive needed medical care. "This, after all, is why Medicaid exists," Judge Elaine E. Bucklo wrote.

**11th Amendment Argument Rejected** This is "an important decision because we were able to get to the merits before jurisdiction was lost under the 11th Amendment" to the U.S. Constitution, Chadwick Bogar, an attorney for the plaintiffs, told Bloomberg BNA.

"Generally, after litigation like this is filed, states move quickly to approve long-pending applications for Medicaid to support a motion to dismiss based on the amendment," he said. Bogar is the managing partner at sb2 Inc., a Harrisburg, Pa., law firm. He represents several long-term care facilities.

The court previously said the long-term care providers' claims weren't barred by the 11th Amendment and the doctrine of sovereign immunity because the plaintiffs were seeking only prospective relief to ensure the state's future compliance with the law.

The 11th Amendment bars citizens from suing their states, but that bar isn't complete, the court said in a June order denying IDHFS Director Felicia Norwood's motion to dismiss the complaint. The provision bars suits for money damages, but doesn't preclude plaintiffs from seeking prospective injunctive relief to stop violations of federal law, even if compliance would require the state to spend money, the court said.

The plaintiffs in this case sought equitable relief, in the form of an order requiring the state to comply with the federal law's reasonable promptness requirement in the future.

The Illinois Attorney General's Office didn't respond to Bloomberg BNA's request for comment by deadline.

Chadwick Bogar and Katie Z. Van Lake, of sb2 Inc., Harrisburg, Pa., represented the plaintiffs. Brian Franklin Kolp and Michael D. Arnold, of the Illinois Attorney General's Office, Chicago, represented Norwood.

By MARY ANNE PAZANOWSKI

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

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

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