

2021 WL 4578295 (C.C.H.)

Wolters Kluwer Health Law Daily

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Health Law Daily Wrap Up

News: Story

October 06, 2021

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TOP STORY—7TH CIR.: ROCK RIVER HEALTH CARE ESTABLISHES PROPERTY INTEREST, DUE PROCESS ISSUE REGARDING RATE RECALCULATION

The Illinois long-term nursing care facilities sufficiently alleged a due process violation after showing the Illinois Department of Health and Family Services provided no notice of alleged deficiencies and offered no opportunity to submit documentation or evidence following the Department's final decision to retroactively recalculate the providers' Medicaid reimbursement rates.

The Seventh Circuit Court of Appeals handed Rock River Health Care, LLC (providers) a huge victory when it reversed the district court's decision dismissing its suit against the Illinois Department of Health and Family Services (Department). The district court held that the providers lacked a property interest in their reimbursement rate and, therefore, did not warrant due process protection. On appeal, the providers allege that the Department failed to follow procedures mandated in the Illinois Administrative Code. The Seventh Circuit concluded that the rates are the type of entitlement that triggers due process, and the providers established a property interest such that any alteration must be conducted with due process. Finally, the court determined that the procedures used in the reimbursement recalculation by the Department failed to provide due process. Accordingly, the court reversed and remanded the case (Rock River Health Care, LLC v. Eagleson, October 4, 2021, Rovner, I.D.).

Plaintiffs–Appellants Rock River Health Care, LLC operates long-term nursing care facilities in Illinois. Following an audit,

the Department recalculated and retroactively decreased the Providers' reimbursement rates. The Providers filed suit under 42 U.S.C. § 1983 and the Medicaid Act alleging the Department violated constitutional and statutory law when it retroactively recalculated their Medicaid reimbursement rates for January through March 2016. The providers allege that the Department failed to follow certain procedures mandated in the Illinois Administrative Code and that the failure was not isolated but happened with all the providers' audits. Specifically, the providers allege that the Department failed to provide preliminary results of its audit and did not identify missing or deficient documents. Furthermore, the Department failed to give the providers an opportunity to respond. Lastly, the providers argue that the reconsideration procedure does

not provide due process because it prohibits the providers from submitting any evidence not provided at the initial stages of the audit. The providers appealed the lower court's decision as to the procedural due process claim.'

Property interest established. The district court dismissed the claim after concluding that the providers lacked a property interest in their per diem Medicaid reimbursement rate. On appeal, the Seventh Circuit first considered whether the providers were deprived of a property interest, and it disagreed with the Department when it concluded that the providers have a legitimate claim of entitlement to payment at the rate circumscribed by state law and the Code, but not to whatever rate they believe is appropriate. Since the payment at issue is defined by statute and not a discretionary decision, it triggers due process protection.

The court drew similarities between this case and employees terminated for cause having a property interest in their jobs. The court explained that simply because the Providers may not succeed on their claim regarding the validity of the rate changes does not eliminate the need to provide due process. Moreover, the Code provides an entitlement to the reimbursement rate based on the Minimum Data Set (MDS) assessment and does not provide for a recalculation of the rate except under specific circumstances. Accordingly, the penalty provision reinforces that the audit procedures are for enforcement purposes and not a part of the rate calculation. Ultimately, the Seventh Circuit concluded that the providers have a legitimate entitlement to a rate determined by the formula, and any changes must be conducted with due process.

Procedures failed to provide due process. The Seventh Circuit sided with the providers in concluding that the Department violated due process when it failed to give the providers notice of the deficiencies and an opportunity to present new evidence. The providers have a private interest in receiving full payment for their services, but that interest is narrow because the rates are limited to a three-month period, and the providers are ancillary beneficiaries of the Medicaid program.

If the evidence considered by the auditors consisted solely of the materials supplied by the providers, they would have sufficient notice of the factual and legal issues. However, the auditors also relied on evidence they personally gathered, and they based their decisions on their credibility assessment and findings from that evidence. The Code provides that auditors must notify providers of evidentiary deficiencies and their initial conclusions; however, the providers allege that never occurred for their audits. Accordingly, the providers are not aware of the evidence before the decision is made to recalculate their reimbursement rates, and they have no opportunity to respond to new evidence. Thus, the providers sufficiently alleged a violation of due process.

The case is No. 19-2750.

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Companies: Rock River Health Care, LLC; Island City Rehabilitation Center, LLC, d/b/a Aperion Care Wilmington; International Nursing & Rehab Center, LLC, d/b/a Aperion Care International

MainStory: TopStory Case Decisions CMS News Medicaid News Medicaid Payment News Illinois News IndianaNews Wisconsin News