

Medicaid

Six Massachusetts Hospitals Sue State To Increase Payments for Public Coverage

BOSTON--Six community hospitals in Massachusetts filed suit against the state Dec. 1 alleging unlawful cuts in reimbursements shortchanged them \$115.8 million over the past six years (*Holyoke Medical Center Inc. v. Secretary of the Executive Office of Health and Human Services*, Mass. Super. Ct., No. 09-5079, filed 12/1/09).

The six hospitals, known as “disproportionate share hospitals” because at least 63 percent of their patients are covered by public insurance, contended that the state has been paying only 40 percent to 86 percent of the costs for care covered by Medicaid. Massachusetts also is underpaying for safety net or “free care,” and subsidized insurance under the state's health care expansion law, they added.

According to the suit, filed against the Massachusetts Office of Health and Human Services, the underpayments violate state and federal Medicaid statutes. The lawsuit also accused the state of unlawful taking and breach of contract.

Instead of following its legal mandate, the state “has based reimbursement primarily on a percentage of a statewide average cost of care for all hospitals, even though the dominance of Medicaid as a payer, and the resource intensiveness of the specific populations served, varies significantly among the Commonwealth's hospitals,” the complaint alleged.

'Unintended Consequence' of Reform.

The underpayments are partly an “unintended consequence” of the state's landmark 2006 law to extend coverage to nearly all of the state's population, the hospitals said, because hospitals are treating patients whose public insurance does not cover the full cost of care. The shortfall in reimbursements totals nearly \$70 million over the last three years and \$115.8 million over the past six years, they said.

State budget cuts have reduced reimbursement further, forcing the hospitals to delay or eliminate investment in capital projects and equipment, they said. “Adequate and sufficient Medicaid reimbursement is necessary to maintain the financial viability of these community institutions, some of which already are financially distressed due to shortfalls in reimbursement for their entire safety net population,” the complaint stated.

Earlier this year, Boston Medical Center filed suit against the state alleging underpayment since the start of the health reform law (135 HCDR, 7/17/09). But the six hospitals contend that their reimbursements fall short of the amounts paid to BMC and other inner city DSH hospitals.

State officials declined comment on the lawsuit but said they are “confident that the state's actions comply with all applicable law and will be upheld.” The statement by the Office of Health and Human Services said that the state increased payments to DSHs by 10 percent at the beginning of November.

More Litigation Expected.

But Michael Collins, chief executive officer of Merrimack Valley Hospital in Haverhill, said the state was merely restoring a 10 percent cut it had implemented at the beginning of 2009. Collins told BNA Dec. 1 that his hospital has had a shortfall of \$4.4 million in state reimbursement over the past three years. The hospital has laid off 30 hospital employees in an area where unemployment is 12 percent, he added.

The community DSH hospitals combined provide care for some 1.5 million patients and handle more than 300,000 emergency room visits a year, they said.

The six hospitals are Berkshire Medical Center in Pittsfield, Signature Healthcare Brockton Hospital in Brockton, Cape Cod Hospital in Hyannis, Holyoke Medical Center in Holyoke, Merrimack Valley Hospital, and Quincy Medical Center in Quincy. Hospitals seeking the highest reimbursements for the six-year period are Brockton Hospital (\$54.4 million) and Cape Cod Hospital (\$28.4 million).

Litigation over reimbursement by states for health care is likely to increase, according to Brian Roark, a health care attorney with Bass, Berry & Sims in Nashville, Tenn. “Hospitals are really getting squeezed” because of their obligation to treat all patients including those who have lost their jobs and health insurance. At the same time, states are looking to cut spending in any way possible, he commented.

Most of the health reimbursement litigation prior to the recession involved Medicare, with hospitals challenging the determination of payment calculations, Roark said.

By Rick Valliere

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