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California Court Orders Medi-Cal to Increase Medicaid Payments to Nursing Homes

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A California court recently ordered California's Medicaid program ("Medi-Cal") to increase payments to nine nursing homes operated by a chain provider in the state. The order was issued following a lawsuit filed by Ober|Kaler on behalf of the chain, challenging Medi-Cal's use of an "underground" regulation that is contrary to the federally-approved state plan and that resulted in underpayments to these nine and several other California nursing homes.

In response to a directive from the California Legislature to increase Medicaid payments to nursing homes, Medi-Cal developed a new reimbursement methodology that went into effect for fiscal year 2005. Among other things, the new methodology called for professional liability insurance (PLI) costs to be reimbursed on a pass-through basis. The Legislature required Medi-Cal to obtain the federal government's approval of the methodology and Medi-Cal obtained CMS approval of a state plan amendment that required reimbursement for PLI costs on a pass-through basis using the provider's most recently available PLI cost data.

In violation of the federally-approved state plan amendment and the state nursing facility reimbursement statute, during fiscal year 2005, Medi-Cal did not use the most recently available PLI cost data. Instead, Medi-Cal decided it would calculate payment rates using the "lesser of" the most recently filed costs or audited costs from an earlier time period. The "lesser of" policy had not been approved by CMS, and it directly contradicted the statute's mandate that PLI costs be reimbursed based on the most recently filed cost information. Medi-Cal abandoned the "lesser of" policy the following year, but for fiscal year 2005, the nine plaintiff nursing facilities had been underpaid as a result of Medi-Cal's deviation from the state law.

In a mandamus proceeding to compel Medi-Cal's compliance with the law, the court ruled that Medi-Cal had a clear legal obligation to use the plaintiff facilities' most recently available PLI cost data and did not have the discretion to substitute audited PLI costs in lieu of the most recently available PLI costs. The court ordered Medi-Cal to pay the plaintiffs the difference between the amount that Medi-Cal should have paid using the methodology set forth in the state plan and the amount that Medi-Cal actually paid using the unlawful "lesser of" rule.

In response to the court's ruling, Medi-Cal agreed to use the nursing facilities' most recently available PLI costs, but requested the court's permission to conduct an audit of those costs before calculating the amount due. The

plaintiffs objected to the audit request on the ground that California law required any audit of the PLI costs to have been conducted within three years after the cost data were submitted, and the three-year period already had expired. The court agreed, rejecting Medi-Cal's request for an audit and ordering Medi-Cal to pay the providers the amount due based on the 2003 as-filed PLI costs within ninety days.

Ober|Kaler's Comments: State Medicaid programs are under significant financial pressure to cut spending. Providers are urged to pay close attention not only to the dollar amount of any adjustment or disallowance made to their Medicaid payment rates, but also to the explanation given by the state Medicaid agency for any adjustment. In this case, the state tried to calculate Medicaid payment rates using a methodology that not only had not been approved by CMS, but was in direct conflict with the methodology established in law enacted by the state's legislature.