

BILL ANALYSIS

Senate Research Center
87R13621 CJM-F

S.C.R. 31
By: Kolkhorst
Health & Human Services
5/11/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Plaintiffs Dorena Coleman, Curtis Jackson, and Federico Perez, individually, (collectively referred to as "Plaintiffs"), filed suit on August 13, 2020, against the Texas Health and Human Services Commission, including employees in their official capacities (HHSC), and sought relief both on Plaintiffs' own behalf and on behalf of a class of similarly situated individuals (Medicaid HCV Class), and filed a motion for class certification on August 14, 2020.

Plaintiffs alleged HHSC's Prior Authorization Criteria and Policy's use of fibrosis score as criterion for direct action antiviral drug (DAA) coverage violated Title XIX of the Social Security Act:

- (a) By discriminating among similarly situated Medicaid recipients on the basis of categorical restrictions that are not based upon prevailing clinical standards, as prohibited by 42 U.S.C. Section 1396a(a)(10)(B)(i) and (ii) and 42 C.F.R. Section 440.240;
- (b) By denying qualified Medicaid participants the provision of necessary medical assistance and treatment coverage with "reasonable promptness," as required by 42 U.S.C. Section 1396a(a)(8);
- (c) By excluding qualified Medicaid recipients from medically necessary treatment coverage as required by 42 U.S.C. Section 1396a(a)(10)(A).

Defendants denied the allegations of the lawsuit, denied all allegations of wrongdoing and liability, and denied any causation of harm or damage to the Medicaid HCV Class.

The parties mediated this matter on December 1, 2020, with the Honorable Patrick Keel as mediator, and thereafter successfully reached an agreement in principle on December 17, 2020.

The parties have now agreed to a full settlement on the following terms:

- (a) HHSC will modify its Medicaid prior authorization (PA) criteria to treat chronic Hepatitis C clients who have METAVIR fibrosis scores of F2-F4 with Direct Acting Antiviral (DAA) treatment by March 1, 2021;
- (b) Between March 1, 2021, and September 1, 2021, Medicaid enrollees with severe extrahepatic effects of chronic Hepatitis C who have fibrosis scores other than F2-F4 will be approved for DAA treatment on a case-by-case basis by the HHSC chief medical director or an MCO medical director, if they are assigned to an MCO;
- (c) As of September 1, 2021, HHSC will remove all METAVIR fibrosis score, drug screening, and specialist prescription PA criteria requirements for DAA treatment for chronic Hepatitis C clients, if the legislature approves the funding for HHSC's Exceptional Item (EI); HHSC agrees that, for the period September 1, 2021, through August 31, 2023, HHSC will not reinstate these criteria.

This Agreement is expressly conditioned upon approval by the Office of the Attorney General of Texas, the Governor of Texas, and the Texas Legislature.

This Agreement is expressly conditioned upon enactment by the Texas Legislature of the EI requested by HHSC.

Section 111.003(b), Texas Civil Practice and Remedies Code, requires a state agency to obtain legislative approval of a settlement agreement that "commits this state to a course of action that in reasonable probability will entail a continuing increased expenditure of state funds over subsequent state fiscal bienniums." Therefore, the Settlement Agreement is expressly conditioned upon the legislature approving and appropriating the agreed upon settlement amount.

RESOLVED

That the 87th Legislature of the State of Texas hereby approve the proposed Settlement Agreement.