

By: Kolkhorst

S.C.R. No. 31

1 SENATE CONCURRENT RESOLUTION

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

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

14 (a) By discriminating among similarly situated Medicaid
15 recipients on the basis of categorical restrictions that are not
16 based upon prevailing clinical standards, as prohibited by 42
17 U.S.C. § 1396a(a)(10)(B)(i) and (ii) and 42 C.F.R. § 440.240;

18 (b) By denying qualified Medicaid participants the
19 provision of necessary medical assistance and treatment coverage
20 with "reasonable promptness," as required by 42 U.S.C.
21 § 1396a(a)(8);

22 (c) By excluding qualified Medicaid recipients from
23 medically necessary treatment coverage as required by 42 U.S.C.
24 § 1396a(a)(10)(A); and

1 WHEREAS, Defendants denied the allegations of the Lawsuit,
2 denied all allegations of wrongdoing and liability, and denied any
3 causation of harm or damage to the Medicaid HCV Class; and

4 WHEREAS, The parties mediated this matter on December 1,
5 2020, with the Honorable Patrick Keel as mediator, and thereafter
6 successfully reached an agreement in principle on December 17,
7 2020; and

8 WHEREAS, The Parties have now agreed to a full settlement on
9 the following terms:

10 (a) HHSC will modify its Medicaid prior authorization (PA)
11 criteria to treat chronic Hepatitis C clients who have METAVIR
12 fibrosis scores of F2-F4 with Direct Acting Antiviral (DAA)
13 treatment by March 1, 2021;

14 (b) Between March 1, 2021, and September 1, 2021, Medicaid
15 enrollees with severe extrahepatic effects of chronic Hepatitis C
16 who have fibrosis scores other than F2-F4 will be approved for DAA
17 treatment on a case-by-case basis by the HHSC Chief Medical
18 Director or an MCO Medical Director, if they are assigned to an MCO;

19 (c) As of September 1, 2021, HHSC will remove all METAVIR
20 fibrosis score, drug screening, and specialist prescription PA
21 criteria requirements for DAA treatment for chronic Hepatitis C
22 clients, if the legislature approves the funding for HHSC's
23 Exceptional Item (EI); HHSC agrees that, for the period September
24 1, 2021, through August 31, 2023, HHSC will not reinstate these
25 criteria; and

26 WHEREAS, This Agreement is expressly conditioned upon
27 approval by the Office of the Attorney General of Texas, the

1 Governor of Texas, and the Texas Legislature; and

2 WHEREAS, This Agreement is expressly conditioned upon
3 enactment by the Texas Legislature of the EI requested by HHSC; and

4 WHEREAS, Section 111.003(b), Texas Civil Practice and
5 Remedies Code, requires a state agency to obtain legislative
6 approval of a settlement agreement that "commits this state to a
7 course of action that in reasonable probability will entail a
8 continuing increased expenditure of state funds over subsequent
9 state fiscal bienniums"; therefore, the Settlement Agreement is
10 expressly conditioned upon the legislature approving and
11 appropriating the agreed upon settlement amount; now, therefore, be
12 it

13 RESOLVED, That the 87th Legislature of the State of Texas
14 hereby approve the proposed Settlement Agreement.