

By: Kolkhorst

S.C.R. No. 31

CONCURRENT RESOLUTION

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

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

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

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

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

24 WHEREAS, Defendants denied the allegations of the Lawsuit,

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

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

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

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

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

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

25 WHEREAS, This Agreement is expressly conditioned upon  
26 approval by the Office of the Attorney General of Texas, the  
27 Governor of Texas, and the Texas Legislature; and

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

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

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