

West Virginia Supreme Court Issues Rare Medicaid Payment Decision



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In a rare **Medicaid** payment decision, the *West Virginia Supreme Court of Appeals* last week reversed the decision of the Bureau for Medical Services (“BMS”) regarding reimbursement of liability insurance costs for nursing facilities. [***Heartland of Beckley WV, LLC v. Bureau for Medical Services***](#), No. 15-0595 (W. V. S. Ct. October 26, 2016). The Court reversed a BMS limitation on reimbursement to insurance premiums only, and required BMS to allow a broad range of costs, including all direct legal expenses, settlements, and judgments. The Court remanded the case for further fact-finding on whether the total costs were “out of line” with similar facilities.

In the rate decisions at issue, BMS had denied reimbursement for any insurance program costs other than actual insurance premiums paid by the skilled nursing facilities (owned by HCR). Because the facilities were covered by high-deductibles or high retention policies, most insurance program costs were disallowed, including all legal fees, court costs, settlement payments and related litigation costs. The disallowance of the bulk of insurance program costs reduced net reimbursement by over two million dollars.

The BMS position was not based on any state rule or state plan provision other than

state plan language as to a “taxes and insurance” cost center. The Supreme Court held that, in such a case, HCR was entitled to rely on favorable federal regulatory guidance under the Medicare program. BMS initially cited to an inapplicable provision of the CMS Provider Reimbursement Manual (“PRM”) but then ignored the pertinent provision of the PRM (cited by HCR) which explicitly allowed insurance program costs other than premiums. The Supreme Court held that the provision cited by HCR was controlling and mandated allowance of the costs. The Court, however, remanded the case to give BMS a chance to prove that the amount of the costs was not in line with similar facilities.

Although the decision was the first Medicaid payment decision of the Court in more than 20 years, the Court issued the decision as a memorandum or unpublished decision. The reversal should, however, act as some curb on the Bureau’s more extreme legal positions.

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