

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL - 6 2004

JAMES W. McCORMACK, CLERK
By: _____ DEP CLERK

PEDIATRIC SPECIALTY CARE, INC.,
CHILD & YOUTH PEDIATRIC DAY
CLINICS, INC., TOMORROW'S CHILD
LEARNING CENTER, LLC, JAMES AND
STACEY SWINDLE, AS PARENTS AND
NEXT BEST FRIENDS OF JACOB AND
NOAH SWINDLE, MINORS, AND
SUSANN CRESPIANO, AS PARENT AND
NEXT BEST FRIEND OF MICHAEL
CRESPIANO, A MINOR

PLAINTIFFS

v. No. 4:01CV00830 WRW

ARKANSAS DEPARTMENT OF HUMAN
SERVICES; KURT KNICKREHM, IN HIS
INDIVIDUAL CAPACITY AND IN HIS
OFFICIAL CAPACITY AS DIRECTOR OF
THE ARKANSAS DEPARTMENT OF
HUMAN SERVICES; RAY HANLEY,
IN HIS INDIVIDUAL CAPACITY; AND
ROY JEFFUS IN HIS OFFICIAL CAPACITY
AS DIRECTOR OF THE DIVISION OF
MEDICAL SERVICES OF THE ARKANSAS
DEPARTMENT OF HUMAN SERVICES

DEFENDANTS
AND THIRD
PARTY
PLAINTIFFS

ARKANSAS FOUNDATION FOR MEDICAL
CARE, INC.

DEFENDANTS

TOMMY THOMPSON, SECRETARY OF THE
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES IN HIS OFFICIAL CAPACITY;
AND MARK McCLELLAN, ADMINISTRATOR,
UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID
SERVICES, IN HIS OFFICIAL CAPACITY

THIRD PARTY
DEFENDANTS

THIRD PARTY COMPLAINT

The third party plaintiffs, Arkansas Department of Human Services; Kurt Knickrehm in his official capacity as director of the Arkansas Department of Human Services; and Roy Jeffus in his official capacity as Director of the Arkansas Department of Human Services Division of Medical Services, for their third party complaint state:

INTRODUCTION

1. The third party plaintiffs assert against Tommy Thompson, Secretary of the Department of Health and Human Services in his official capacity; and Mark McClellan, Administrator, CMS, in his official capacity, a claim for federal financial participation for medical assistance payments for Child Health Management Services (“CHMS”) that are required by orders of the United States District Court for the Eastern District of Arkansas, opinions of the United States Court of Appeals for the Eighth Circuit, or both, and which would not be made but for such orders and opinions, regardless of whether such payments conform to one or more of the following: (1) Title XIX of the Social Security Act (“Medicaid”); (2) Medicaid regulations; (3) The Arkansas Medicaid State Plan approved by CMS.

STATEMENT OF JURISDICTION AND VENUE

1. Plaintiffs are various Arkansas corporations and individuals.
2. Defendant Arkansas Department of Human Services (“ADHS”) is an agency of the executive branch of the State of Arkansas, a sovereign entity.

3. Defendants Knickrehm and Jeffus in their official capacities are officials of the ADHS.

4. Defendant Arkansas Foundation for Medical Care ("AFMC") is an Arkansas Corporation with its principal place of business in Fort Smith, Arkansas. AFMC performs Medicaid utilization reviews under contract with ADHS to determine whether to authorize CHMS care.

5. Third party defendant United States Department of Health and Human Services Center for Medicare and Medicaid Services ("CMS") is a Department of the United States of America; Tommy Thompson is Secretary of the Department of Health and Human Services, and Mark McClellan is Administrator, CMS.

6. Plaintiff has filed a second amended complaint, a copy of which is attached as Exhibit A. Among other things, plaintiffs allege that CHMS is medically necessary by virtue of being prescribed, but that in the course of performing utilization reviews, AFMC denies substantial amounts of requested care. Plaintiffs seek a determination that such denials are in violation of various alleged federal and constitutional rights; and pray for an order directing AFMC to determine that all prescribed CHMS is medically necessary and to automatically approve such care.

7. The Court has jurisdiction over third party claims as they arise under federal law.

8. The Court has jurisdiction of claims against the United States under 28 U.S.C. § 1346 (a)(2).

9. Venue is proper in the Eastern District of Arkansas under 28 U.S.C. 1402 (a).

STATEMENT OF FACTS

10. Medicaid is a joint federal-state program to provide medical assistance to persons whose income and resources are insufficient to meet the costs of such care.

11. Medicaid is financed by state and federal funds. The proportion of federal funds is determined separately for each state by application of a formula, the product of which is the federal medical assistance percentage for that state. In Arkansas, CMS pays approximately seventy-five percent of the cost of medical assistance.

12. In order to receive federal Medicaid funding, each state must submit a state Medicaid plan to CMS, receive CMS approval of the plan, operate the state's Medicaid program in compliance with Medicaid laws and regulations, and in conformity with the approved Medicaid State Plan.

13. The complaint concerns CHMS, a service for children under the Arkansas State Medicaid Plan.

14. Third party plaintiffs contracted with AFMC to determine the medical necessity of CHMS. Under the contract, AFMC issues prior approvals for medically necessary CHMS for Medicaid eligible children and denies prior approvals for CHMS that is not medically necessary.

15. The Medicaid child health program (Early and Periodic Screening, Diagnosis, and Treatment, or "EPSDT") requires that in order to qualify for Medicaid reimbursement, EPSDT services must be necessary.

16. 42 U.S.C. § 1396a (a)(30)(A) requires states to implement effective methods and procedures limiting Medicaid payments under the State Plan to medically necessary care.

17. Failure by a state to conform to the State Medicaid Plan approved by CMS subjects the state to loss of federal Medicaid funding.

18. Payments made in the absence of effective methods to prevent payment for unnecessary care generally are not entitled to federal matching funds.

19. The Arkansas Medicaid State Plan, Attachment 3.1-A, p. 1i (for categorically needy recipients) and Attachment 3.1-B, p. 2h (for medically needy recipients) provide that "CHMS treatment requires prior authorization to determine and verify the patient's need for CHMS services." Accordingly, prior authorization must determine and verify medical necessity in order for Arkansas to remain in compliance with its approved Medicaid State Plan and thus remain eligible for federal Medicaid funds.

20. Federal Medicaid funding is necessary for Arkansas to continue providing Medicaid in general, and CHMS in particular.

21. Unless CMS is made a party hereto, it may not be enjoined to provide federal financial participation for CHMS provided in the absence of prior authorization that determines and verifies medical necessity for CHMS.

22. Unless CMS is made a party hereto, it may not be enjoined to provide federal financial participation for CHMS provided in the absence of effective utilization controls.

CLAIM

23. CMS is liable to the third party plaintiff for the federal medical assistance percentage of Medicaid funds that are paid as a consequence of this litigation.

24. Any decree causing the third party plaintiff to pay for medically unnecessary care or to suspend activities to determine and verify medical necessity as required by the


approved State Medicaid Plan will require federal action and cooperation to effectuate.

25. Joinder of CMS as a third party defendant is necessary in order to give effect to any order entered in favor of plaintiff.

WHEREFORE, third party defendants pray that any relief rendered in favor of plaintiff include a determination that CMS is liable to the third party plaintiff for the federal medical assistance percentage of Medicaid funds that are paid as a consequence of such relief.

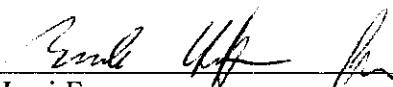
Respectfully submitted,

ARKANSAS DEPARTMENT
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