

## EIGHT CIRCUIT DENIES MINNESOTA APPEAL OF CMS REJECTION OF MEDICAID STATE PLAN AMENDMENT

In an opinion filed July 31, 2007, the U.S. Court of Appeals for the Eight Circuit rejected Minnesota's appeal of a Centers for Medicare and Medicaid Services (CMS) decision to deny a Medicaid state plan amendment (SPA) as a result of inadequate responses to the agency's increased scrutiny of Medicaid reimbursement and state funding mechanisms. *Minnesota v. CMS*, 8th Cir., No. 06-3263. The Court upheld CMS' right to impose a new level of scrutiny in the SPA approval process, rejecting Minnesota's argument that CMS was required to proceed through notice and comment rulemaking or that its decision relying on this process was arbitrary or capricious.

In 2003, Minnesota submitted a SPA to increase supplemental payments to county-owned nursing homes, funded through increased intergovernmental transfer (IGT) payments from the counties to the State. CMS denied the proposed SPA because the State provided insufficient answers to the agency's request for additional information. Specifically, CMS determined Minnesota's compliance with the aggregate upper payment limit (UPL) on reimbursement to nursing homes does not alone ensure that payments are consistent with "efficiency, economy, and quality of care" as required under federal law. Minnesota had suggested that CMS should amend the UPL regulation if the agency has concerns that payments under the plan are not efficient and economical, rather than require new justification of payment rates.



CMS also found that the State failed to adequately explain its funding mechanisms, leaving the agency unable to determine that the SPA would comply with federal law requiring the State to provide 40% of non-federal Medicaid funds. In its response to CMS' request for additional information, Minnesota stated that county providers involved in intergovernmental transfers do not return the Medicaid funds to the State, but that the State does not track funds once they are paid to a provider.

Minnesota primarily raised two issues on appeal. First, the State argued that CMS' increased scrutiny of the Minnesota state plan amendment, in particular of the use of IGTs, had the effect of imposing a new substantive rule without following the requirements of notice and comment rulemaking under the Administrative Procedure Act (APA). Second, even if the decision to deny the SPA was not based on a new rule, Minnesota argued that the decision was arbitrary and capricious in violation of the APA.

The Court held that “CMS’s request for further information did not imply a rejection of intergovernmental transfers and therefore could not be a new substantive rule.” The Court further found that compliance with the upper payment limit “does not define the boundaries of the Secretary’s obligation to review proposed state plan amendments,” relying on a recent Ninth Circuit case rejecting a similar argument. (See *Alaska Dep’t of Health & Soc. Svcs. v. CMS*, 424 F.3d 931, 940 (9th Cir. 2005)). CMS’ increased scrutiny of the SPA was therefore consistent with the Secretary’s authority in an individual adjudication.

Finally, the Court held that while the Secretary’s scrutiny of the 2003 SPA was different from prior adjudications, it was not arbitrary and capricious or unsupported by substantial evidence. The Court found that this review necessarily differed from previous CMS scrutiny of state plans because of the agency’s “commitment to detecting abusive requests for Medicaid funding.” The Court noted CMS’ revision of the upper payment limit regulation in 2001 as well as a 2003 report by the Government Accountability Office describing inappropriate financing schemes involving intergovernmental transfers. The Court further found that CMS’ decision to reject the SPA based on lack of information was supported by substantial evidence in the record. According to the Court, the Secretary’s skepticism about the SPA was warranted because Minnesota’s inability to track the use of the funds by county-owned nursing homes “raises the specter that the required intergovernmental transfers will create the abusive funding structure that Medicaid Services is attempting to prevent.”

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