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Kentucky Appellate Court Affirms Dismissal of Enrollee Claims Against MCOs

Article By:

Jeffrey DeBeer

The Kentucky Court of Appeals recently affirmed dismissal of numerous lawsuits filed by Medicaid enrollees against Managed Care Organizations ("MCOs") and the Commonwealth's Cabinet for Health and Family Services (the "Cabinet"). *Appalachian Reg'l Healthcare, Inc. v. Commonwealth*, No. 2015-CA-001670-MR, 2019 Ky. App. Unpub. LEXIS 629 (Ct. App. Aug. 30, 2019). Applying recent Kentucky Supreme Court authority, the Appellate Court ruled that the enrollees lacked constitutional standing to sue. *Id*. (citing *Cabinet for Health & Family Servs. v. Sexton*, 566 S.W.3d 185, 188 (Ky. 2018)).

In *Appalachian Reg'l*, hospitals provided services to several Medicaid enrollees. The enrollee's MCO denied the hospitals' claims for payment, deeming the services medically unnecessary. Notably, the hospitals did not send bills to the enrollees; Medicaid laws prohibit hospitals from holding enrollees liable for the costs of medical care.

The enrollees, through the hospitals, requested a state fair hearing from the Cabinet. The Cabinet dismissed these proceedings. The enrollees then filed suit. Like the Cabinet, the trial court dismissed the litigation. Both the Cabinet and the trial court held that the enrollees lacked standing to challenge the MCO's decision to deny the claims.

The Kentucky Court of Appeals affirmed. Applying *Sexton*, the Court held that the enrollees had not suffered an "injury" because they lacked liability for payment. The Court also rejected the argument that state Medicaid statutes confer standing to sue. The Court recognized that "deprivation of a procedural right without some concrete interest that is affected by that deprivation—a procedural right *in facuo*—is insufficient to create . . . standing." *Id.* (internal quotation marks and citation omitted). The Court thus concluded that the "injuries proffered at various times" were merely "conjectural or hypothetical."

Sexton and *Appalachian Reg'l* resolve some disagreement among lower courts. The cases also provide further certainty to MCOs by confirming that hospitals cannot use enrollees to seek reimbursement for healthcare services in litigation. *Appalachian Reg'l* is also a cautionary tale for hospitals to weigh their options carefully, before proceeding with costly litigation, only to have lawsuits dismissed.

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