

A Long Term Care and Seniors Housing Law Update

Lane Powell Helps WHCA Win Significant Victory in Federal Court Challenge to Washington Boarding Home Law

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On January 14, 2009, the United States District Court for the Western District of Washington struck down portions of RCW 18.20.440 as unconstitutional in *Washington Health Care Association v. Robin Arnold-Williams, et al.*, No. 3:08-cv-05427-RJB. As a result of this ruling, any boarding home with a Medicaid contract signed before March 28, 2008 who wants to avoid the Medicaid “lock in” provisions of RCW 18.20.440 should either terminate their current Medicaid contract or refuse to renew the contract when it expires.

The law, originally enacted as Substitute Senate Bill 6807, was an effort by the Washington legislature to force participating boarding homes to remain in the Medicaid program despite the growing inadequacy of Medicaid reimbursement rates. Specifically, RCW 18.20.440 prevented participating boarding homes from exercising their contractual right to voluntarily withdraw from the Medicaid program and transfer Medicaid residents to other facilities. Under the law, if a boarding home elected to terminate its existing Medicaid contract with the Department of Social and Health Services (“DSHS”), it could no longer transfer its Medicaid residents and convert to an entirely private-pay model. Rather, the law required withdrawing boarding homes to continue to care for all residents receiving Medicaid on the date of termination, as well as private-pay residents who had resided at the home for at least two years and had become eligible for Medicaid within six months of termination.

Shortly after RCW 18.20.440 was enacted, the Washington Health Care Association (“WHCA”), represented by Lane Powell, challenged the law on behalf of its boarding home members. Both parties cross-moved for summary judgment on the issue of the law’s constitutionality. After substantial briefing and oral argument, the court found that RCW 18.20.440 violated the Contract Clause of the United States Constitution because it retroactively impaired the material terms of existing Medicaid provider agreements between boarding homes and DSHS. In so doing, the court rejected DSHS’s argument that the law was “reasonable and necessary” to further the state’s interest in protecting the health and welfare of Medicaid recipients. The court noted that, in rushing to enact RCW 18.20.440, the legislature failed to consider the rights of WHCA’s members: “The court is sensitive to the burdens placed upon a state agency with limited funds and staff to meet the needs of vulnerable people. ... Nonetheless, the law does not permit the government to push back by requiring contractors to provide services involuntarily, leaving the contractors with no way out.”

In a subsequent order clarifying the scope of its ruling, the court held that RCW 18.20.440(1), (3), and (6)(a) and (b) are unconstitutional “as applied to all boarding homes that had [Medicaid] provider agreements in effect on March 28, 2008, while those agreements remain in effect ...” As a practical matter, the effect of this ruling is that any boarding home with a Medicaid contract signed before March 28, 2008, has the right to voluntarily terminate that contract, completely withdraw from the Medicaid program and transfer its remaining Medicaid residents to other facilities — just as it could under prior law.

It is important to recognize that the court did not strike down RCW 18.20.440 in its entirety. First and foremost, RCW 18.20.440 is unconstitutional only to the extent it applies to Medicaid contracts existing on the date of the law’s enactment. In other words, boarding homes who renew or sign a new Medicaid contract after March 28, 2008, will receive no benefit from the court’s ruling; RCW 18.20.440 will apply. Moreover, all boarding homes—even those that successfully withdraw from the Medicaid program—must still comply with certain new notice provisions set forth in RCW 18.20.440. Finally, RCW 18.20.440(5) now requires boarding homes to “give the department and its residents sixty days’ advance notice of the facility’s intent to withdraw from participation in the medicaid program”— as opposed to the 30 days previously required by the Medicaid contract and RCW 70.129.110.

Boarding homes who wish to terminate their Medicaid contracts, or who need advice complying with RCW 18.20.440 notice requirements and other provisions, should contact their legal counsel.

For more information on the court’s ruling or for a copy of the decision, please contact the Long Term Care and Seniors Housing Clint Service Team at Lane Powell:

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