

Frequently Asked Questions:
Connecticut Association of Health Care Facilities, Inc. v. Rell

- 1. Why has the Connecticut Association of Health Care Facilities, Inc. (CAHCF) filed a federal lawsuit on behalf of its members against the Governor of Connecticut, M. Jodi Rell?**

CAHCF believes that Connecticut's payment methodology for Medicaid-participating nursing facilities is broken—so broken that it violates federal law. CAHCF has filed its lawsuit in the United States District Court for the District of Connecticut as a last resort to compel the State to comply with federal law.

- 2. What is the lawsuit's principal legal argument?**

CAHCF's principal legal argument is that Connecticut's payment system for Medicaid-participating nursing facilities conflicts with federal law. The United States Constitution instructs that when state law conflicts with federal law, federal law controls. Federal law requires States to assure that their Medicaid payments are consistent with efficiency, economy, quality of care, and equality of access. However, Connecticut uses a methodology that sets payment rates based solely on state budgetary concerns, regardless of whether the amount spent—or the process used to determine the amount to be spent—assures that payments are consistent with efficiency, economy, quality of care, and equality of access. Therefore, the United States Constitution instructs that Connecticut's conflicting payment methodology is null and void.

- 3. Does CAHCF's lawsuit seek to break new legal ground?**

No. CAHCF's principal legal argument is similar to that used by Medicaid providers in California and Washington State. Like Connecticut, California and Washington State recently cut Medicaid payment rates based solely on state budgetary concerns. Federal courts at both the trial and appellate levels have issued orders stopping those rate cuts after finding that they conflicted with federal law.

- 4. Why now?**

As explained in detail by CAHCF's Complaint for Declaratory and Injunctive Relief, studies performed by the State itself have confirmed that Connecticut's payment methodology for Medicaid-participating nursing facilities is broken. CAHCF has done everything in its power to effect change legislatively, to no avail. Therefore, CAHCF has filed its lawsuit as a last resort to compel the State to comply with federal law.

- 5. What makes nursing facilities so special that CAHCF thinks its members deserve higher Medicaid payments?**

Nursing facilities care for the most frail and elderly members of our society. However, the long-term care industry in Connecticut is in a state of crisis, as reflected by the wave

of bankruptcies and state receiverships over the last several years, as well as the skyrocketing number of nursing facilities that have been forced to ask the State for emergency rate increases to stave off bankruptcy and/or state receivership.

Furthermore, it is a fundamental American value that when a government purchases goods and services, it should have to pay a fair price. At a minimum, that price should cover the reasonable cost of providing the goods and services. Connecticut's Medicaid program, however, has long paid most nursing facilities less than the reasonable cost of providing care to Medicaid beneficiaries. That fact was recently acknowledged by the Supreme Court of Connecticut, which issued a ruling in 2009 (*St. Joseph's Living Center, Inc. v. Town of Windham*) recognizing that Connecticut's Medicaid payments do not fully compensate most nursing facilities for actual patient care costs. This funding gap, the Supreme Court of Connecticut explained, relieves the State of having to shoulder the entire financial burden of caring for the indigent elderly. Instead, nursing facilities must try to make up for the Medicaid funding gap by, among other things, increasing the rates charged to private individuals and private insurance. Those nursing facilities that are unable to do so struggle financially, as reflected by the wave of bankruptcies and state receiverships over the last several years, as well as the skyrocketing number of nursing facilities that have been forced to ask the State for emergency rate increases to stave off bankruptcy and/or state receivership.

6. Why does CAHCF's lawsuit name only Governor Rell as a defendant? Does CAHCF have something against Governor Rell personally?

No. Governor Rell is named as the sole defendant because she is the State's chief executive officer. Therefore, she is legally responsible for the official actions taken not only by her, but by subordinate state officials as well. Naming a State's chief executive officer as the defendant is a well-established practice in federal lawsuits of this kind because neither a State's sovereign immunity nor the United States Constitution preclude a lawsuit in federal court that seeks to stop ongoing violations of federal law.

7. What relief does CAHCF's lawsuit seek?

CAHCF's lawsuit does not seek money damages from the State or from Governor Rell. Instead, CAHCF's lawsuit asks the court to issue an injunction that, among other things, requires Governor Rell to comply with federal law by assuring that Medicaid payments to nursing facilities are consistent with efficiency, economy, quality of care, and equality of access. For example, after years of underpayment, most nursing facilities were scheduled to receive a significant increase in their payment rates due to a longstanding state statutory requirement that payment rates be adjusted periodically so that changing conditions impacting the cost of providing nursing facility services are taken into account during the process of establishing nursing facility payments. However, based solely on state budgetary considerations, legislation recently signed by Governor Rell eliminated the scheduled adjustments and froze most nursing facilities' payment rates at their already-depressed levels until July 1, 2011.

8. Is CAHCF's lawsuit related to the lawsuit challenging Connecticut's decision to cut Medicaid services for certain non-citizens?

No. The lawsuit challenging Connecticut's decision to cut Medicaid services for certain non-citizens (*Pham v. Starkowski*) is a separate lawsuit pending in state court that raises constitutional issues that are different from those raised by CAHCF's lawsuit in federal court. The two lawsuits share one common attribute, however: both raise legal questions related to Connecticut Public Act 09-5, September Special Session, 2009, which implements Medicaid-related aspects of the state budget for state fiscal years 2010 and 2011.

9. What is the timeframe for action by the court in CAHCF's lawsuit and what happens next?

CAHCF's Complaint for Declaratory and Injunctive Relief was filed on January 28, 2010. It typically takes the court up to 24 hours to assign a docket number, assign a judge, and issue a summons. Once served, Governor Rell will have 21 days to file a formal response to CAHCF's complaint in the form of an answer or a motion to dismiss.

10. Will CAHCF's lawsuit be the only avenue used to fix the State's payment system for Medicaid-participating nursing facilities?

No. CAHCF will continue to work with the General Assembly during its upcoming session, as well as Governor Rell, in an effort to fix the State's Medicaid payment system for nursing facilities. However, the filing of litigation was necessary to ensure that if these legislative efforts fail, CAHCF's members will receive the full protection afforded by federal law.

11. Is CAHCF's lawsuit in any way related to recommendations contained in the Long-Term Care Plan or other recommendations to create a balance of long-term care services between institutional and community-based settings?

No. Those recommendations are about providing care in the most appropriate care setting and are not related to the payment methodology for long-term care services provided in institutional settings.

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