UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES 200 Independence Avenue, SW Washington, DC 20201 and XAVIER BECERRA Secretary of the United States Department of Health and Human Services, in his official capacity, 200 Independence Avenue, SW Washington, DC 20201 Defendants.	)	Case No. 21-cv-21616

COMPLAINT

INTRODUCTION

1. The Florida Agency for Health Care Administration ("AHCA," "Florida," or "the State"), seeks review of a final administrative decision by the United States Department of Health and Human Services ("HHS") Departmental Appeals Board ("Board") disallowing $97,570,183 in federal reimbursement for certain payments that the State made to hospitals and other health care providers through the Medicaid program from July 1, 2006 to June 30, 2013 (State Fiscal Years ("SFYs") 2007 – 2013, also known as Demonstration Years ("DYs") 1-7). The disallowance was taken by the Centers for Medicare & Medicaid Services ("CMS"), which is the constituent agency within HHS tasked with oversight of the Medicaid program.

2. The dispute involves the interplay between two types of Medicaid payments that AHCA makes for which it is entitled to federal reimbursement: Disproportionate Share Hospital ("DSH") payments and Low-Income Pool ("LIP") payments.

3. Both DSH and LIP payments are intended to provide additional support to hospitals that provide services to the State's most vulnerable populations. In this case, almost all of the funds that HHS seeks to recover involve payments to Jackson Memorial Hospital, the State's largest provider of safety net services to Medicaid patients, the uninsured, and the underinsured.

4. DSH payments are authorized under Title XIX of the Social Security Act ("SSA"), but each State is limited in the amount of DSH payments that it can distribute. First, each hospital has a "hospital-specific" DSH cap, which limits the amount of DSH payments that a state can make to a specific hospital for the costs incurred by the hospital in furnishing inpatient and outpatient services to Medicaid-eligible individuals and the uninsured, after deductions of Medicaid payments. 42 U.S.C. § 1396r-4(g). Second, federal law imposes an annual aggregate cap on the amount of DSH payments that each state can distribute to hospitals. 42 U.S.C. § 1396r-4(f).

5. LIP payments are authorized under the special terms and conditions of Florida's "demonstration project" or "waiver" that the Secretary of HHS first approved in 2005, effective in 2006, pursuant to Section 1115 of the Social Security Act, 42 U.S.C. § 1316. Like DSH, the purpose of LIP payments during the time period at issue is to "ensure continued government support for the provision of health care services to Medicaid, underinsured, and uninsured populations."

6. Like DSH, LIP has a provider-specific cap equal to the costs of medical services for Medicaid patients and the underinsured, net of Medicaid payments. Also, like DSH, LIP payments are subject to an annual aggregate cap. In addition, LIP permitted inclusion of costs of medical services related to underinsured patients.

7. From its inception, the purpose of the LIP program has been to provide support to hospitals and other providers beyond the DSH caps, and LIP was intended to be more flexible than DSH. However, HHS is now taking the position that a hospital's uncompensated costs must be calculated for LIP purposes using a much more conservative methodology than the Medicaid statute permitted the State to use to calculate uncompensated costs for DSH purposes during the same period. This does not make any sense, and it is inconsistent with both the terms of the Section 1115 demonstration project and the Medicaid statute. The HHS Departmental Appeals Board's decision upholding the disallowance of $97,570,183 in federal funds is arbitrary, capricious, an abuse of discretion, and not in accordance with the text or the purpose of Section 1115 of the Social Security Act or the terms and conditions of Florida's Section 1115 demonstration project. The Court should set aside the Board's decision and the underlying disallowance.

JURISDICTION AND VENUE

8. This action arises under Section 1116 of the Social Security Act, 42 U.S.C. § 1316(e)(2)(C), and Section 10 of the Administrative Procedures Act, 5 U.S.C. § 704. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

9. Venue is proper under 28 U.S.C. § 1319(e)(1) and 42 U.S.C. § 1316(e)(2)(C).

PARTIES

10. Plaintiff Florida Agency for Health Care Administration is the "single State agency" responsible for administration of the State of Florida's participation in the federal Medicaid program. *See* 42 U.S.C. § 1396a(a)(5).

11. Defendant United States Department of Health and Human Services ("HHS"), through its constituent agency the Centers for Medicare & Medicaid Services, is the federal department responsible for administering the Medicaid program.

12. Defendant Xavier Becerra is the Secretary of HHS and is responsible for the overall administration of the agency. He is sued in his official capacity.

13. The HHS Departmental Appeals Board acts for the Secretary in disputes involving Medicaid disallowances. *See* 42 U.S.C. § 1316(e)(2)(A).

BACKGROUND

The Medicaid Program and Medicaid Funding

14. Medicaid is a cooperative federal-state program in which the federal government provides financial assistance to participating States in connection with the provision of health care – referred to as "medical assistance" – to lower-income individuals and families. Under the federal Medicaid statute (Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq*.), States are entitled to federal reimbursement for a percentage of their expenditures on medical assistance made pursuant to a state plan approved by CMS. *See id*. § 1396a-b.

15. The federal government's share of a State's expenditures under the Medicaid program is called "federal financial participation" ("FFP"). 42 C.F.R. § 400.203.

16. Section 1115 of the SSA permits the Secretary, acting through CMS, to waive compliance with certain statutory requirements applicable to the Medicaid program to approve experimental, pilot or demonstration projects that, in the judgment of the Secretary, are likely

to assist in promoting the objectives of the Medicaid program. 42 U.S.C. § 1315. Expenditures authorized under a Section 1115 demonstration project are "regarded as expenditures under the state plan," and also qualify for federal financial participation. 42 U.S.C. § 1315(a)(2).

17. CMS's approval of a waiver under Section 1115 is subject to special terms and conditions that are negotiated between CMS and the State.

Medicaid DSH Payments

18. Since 1981, Section 1902(a)(13)(A)(iv) of the SSA has required that State Medicaid programs make Disproportionate Share Hospital or "DSH" payments to qualifying hospitals that serve a "disproportionate number of low-income patients with special needs." 42 U.S.C. § 1396a(a)(13)(A). The purpose of the DSH provision is to improve the financial stability of these hospitals and preserve access to quality health services for low-income patients. H.R. Rep. No. 97-208, at 962 (1981).

19. Section 1923 of the SSA establishes an annual "DSH allotment" for each State that limits the amount of federal financial participation for total statewide DSH payments made to hospitals. 42 U.S.C. § 1396r-4(f)(3).

20. Section 1923 also establishes a "hospital-specific" limit for DSH payments. 42 U.S.C. § 1396r-4(g)(1)(A). This provision is captioned "amount of adjustment subject to uncompensated costs." *Id.*

21. Section 1923(g)(1)(A) provides that DSH payments made to a hospital cannot exceed:

> The costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this title, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year.

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