

McDonald Hopkins files federal lawsuit challenging constitutionality of Illinois statute

Hospital-based physicians seek to invalidate law

Hospital-based pathology groups and physicians in Illinois filed a federal lawsuit on June 24, 2011, seeking to invalidate, on constitutional grounds, Illinois legislation designed to shift the burden of absorbing certain patient-related costs from insurers to practitioners of only a few specifically-enumerated medical specialties.

The Statute: Illinois Public Act 96-1523

Illinois Public Act 96-1523, took effect June 1, 2011. It amended portions of the Illinois Insurance Act (changing 215 ILCS 5/356z.3 and adding 215 ILCS 5/356z.3a) in such a way as to fundamentally alter the relationships between certain physicians, their patients, and third-party payors such as insurers.

The statute prohibits an inexplicably singled-out group of out-of-network physician-providers from billing insured patients for anything other than the applicable deductible/co-pay that would apply if the provider were an in-network provider for that patient. According to the statute, the provider must seek any remaining amount due from the patient's insurer. In the event of a dispute as to the amount the insurer will pay, the statute mandates binding arbitration at the election of either the insurer or the physician. By its terms, the statute applies to only those physicians or other providers who provide radiology, anesthesiology, pathology, neonatology or emergency department services to insureds, beneficiaries, or enrollees in a participating facility or participating ambulatory surgical treatment center.

The statute originated as Illinois House Bill 5085, a bill intended to require certain insurance policies to provide coverage for certain oral cancer treatment drugs, and for qualified individuals to participate in clinical cancer trials, as well as addressing other related issues. The bill was eventually passed out of both houses without substantial discussion, following a single amendment on the floor of the Senate that entirely altered the bill to its present form. The statute, which after amendment was touted as an effort to relieve patients of the perceived administrative and financial burden of balance billing, actually does no such thing. Regulations already in place had accomplished this goal some three years earlier. Rather, legislative history suggests that the statute actually acts to shift the economic burden from insurers, as set forth in these prior regulations, to a limited group of physicians.

The Case: *Peoria Tazewell Pathology Group S.C. v. Messmore*

A group of hospital-based pathology groups and physicians filed suit on Friday, June 24, 2011, seeking to overturn the statute as unconstitutional under both the United States and Illinois constitutions. Plaintiffs, Peoria Tazewell Pathology Group, Consultants in Clinical Pathology, Ltd., Consultants in Laboratory Medicine and Pathology, Ltd., Dr. Ronald Champagne and Dr. R. Glenn Hessel, also seek to enjoin the state from enforcing the statute pending a final determination in the litigation.

Plaintiffs challenge the statute as arbitrarily, unfairly and irrationally depriving their practice groups and physicians, as well as thousands of physicians like them across Illinois and elsewhere, of their rights to carry on their profession, make contracts and earn a living as they choose. Among other concerns, Plaintiffs argue that the statute infringes their rights to jury trial and access to the courts; denies them the benefit of their pre-existing freely negotiated contracts with hospitals and other similar facilities; eviscerates their rights to professionally engage with whom and how they choose, and otherwise prohibits them from pursuing their rights to earn their livelihoods as they choose, without any assurance of reasonable compensation in exchange for their services. Because of this unconstitutional deprivation of rights, Plaintiffs argue, the statute must be declared unconstitutional.



The lawsuit, (*Peoria Tazewell Pathology Group, S.C. et al v. Messmore et al*, Case Number 1:11-CV-04317 (N.D. Ill. 2011).), was filed in the United States District Court for the Northern District of Illinois on Friday, June 24, 2011, followed shortly thereafter by a motion for preliminary injunction, which was filed on Monday, June 27, 2011. The case has been assigned to the Honorable John W. Darrah.

The court has set a briefing schedule on the motion for preliminary injunction, with Defendants to respond to the motion for preliminary injunction on or before July 26, 2011, and Plaintiffs to file and serve their reply, if any, on or before August 10, 2011. A hearing before Judge Darrah will follow.

We will keep you posted about this important case. For more information, please contact:

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