Court Voids 12% Rate Rise State Gave Medical Insurer

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By Martin Fox

A State Supreme Court justice invalidated yesterday a 12 percent rate increase granted last year to Health Insurance Plan of Greater New York, a major medical health insurer, because of the failure of the State Superintendent of Insurance to obtain the approval of the Commissioner of Health before authorizing the increase.

Justice Xavier C. Riccobono ruled that twenty-eight neighborhood clinics providing services to subscribers to the Health Insurance Plan were "hospitals" as defined by the Public Health Law. Therefore, the Insurance Superintendent was required to obtain certification for higher premiums to be paid by subscribers from the Commissioner of Health.

'Tortured' Reasoning

The "reasoning employed" by the various respondents, including the Superintendent and Commissioner, in arguing that the HIP medical groups were not "hospitals," Justice Riccobono said, "is so tortured and follows such a sinuous path of presumption and self-definition as to be totally unworkable." His decision *(Rubin v. Harnett)* is published today under New York County, Supreme Court, Special Term, Part 1.

In granting the Article 78 petition and voiding the increase, the court stayed its findings and permitted the higher rates imposed last April 1 to remain in effect for at least one month. During that interval, the Superintendent was directed, within twenty days, to submit the HIP increase "with all supporting documentation" to the Commissioner of Health. In turn, the Commissioner was ordered to make a determination as to certification within ten days after receiving the information.

City Impact Seen

Richard M. Asche, counsel for the petitioners, saw the ruling as being possibly financially advantageous to the city, which has been paying the higher rate as part of its contractual obligations to many municipal unions. He described HIP and Blue Cross as being the largest medical insurers in the metropolitan area.

Among the petitioners was Donald Rubin, who is head of the Consumer Commission on Accrediation of Health Services, a nonprofit organization providing information on health care to consumers.

The "dispositive issue" in the dispute, Justice Riccobono emphasized, was whether themedical groups operating clinics and receiving reimbursement from HIP were "hospitals" as defined in Section 2807(3) of the Public Health Law. That section states that the Commissioner must approve rate schedules "for payments for hospital and health-related service. . ."

Rational Basis Approach

The Commissioner of Health argued that the HIP clinics "are not hospitals," and therefore this determination should be binding because it was "an administrative decision (and) has a rational basis."

Justice Riccobono rejected this claim, as he did a secd relying upon *People v. Dobbs Ferry Medical Pavilion, Inc.*, 40 AD2 324 aff. 33 NY2d 584. The *Dobbs Ferry* case involved a private abortion clinic which was found not to be a hospital but "merely a partnership engaged in a specialized group practice."

Justice Riccobono noted that this case prompted the Department of Health to distinguish diagnostic centers and treatment centers from private medical groups. As a result, the HIP-affiliated groups fall under the classification of clinics, not private-practice facilities, he ruled.

"The respondents are quite correct in pointing out that an interpretation of a statute by an administrative body charged with the administration of that statute should be given great weight and consideration by the courts," Justice Riccobono concluded. "And this court is not unmindful of the expertise and wisdom of the respondents in these matters.

"However, it is also true that plain and simple words should be given a plain and simple meaning, especially where no facts are asserted which would warrant a modification or different interpretation. . .

"It is the view of this court that the approval of the HIP rate increase by the respondent Superintendent of Insurance without first having obtained the certification of the Commissioner of Health constituted the failure by that state officer to perfrom a perform a duty enjoined by law, and that such violation of lawful procedure was arbitrary, capricious and an abuse of discretion. . .

"Moreover, this court takes judicial notice of the fact that in the last half of the twentieth century the nature of health care and the provision of medical services is such that the classic 'hospital' as it was known in earlier times is now merely the hub of the medical services wheel as opposed to it being the entire vehicle for the delivery of such services. For the respondents to continue to adhere to earlier perceptions of medical service delivery is to abdicate their

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RUBIN v. HARNETT—Petitioners herein have instituted this article 78 proceeding seeking a judgment (1) enjoining the respondent, Superintendent of Insurance of the State of New York, from permitting any pending and future rate increase application by the Health Insuracne Plan of Greater New York (H.I.P) from becoming effective absent compliance with Public Health Law Sec. 2807(3); (2) declaring that the rate increase approved by the respondent, Superintendent of Insurance of the State of New York, is illegal and a nullity; and (3) enjoining the respondent, Mayor of the City of New York and the New York City Board of Estimate, from approving an increase in H.I.P. rates unless and until the respondents have complied with Public Health Law Sec. 2807(2). A review of the pertinent facts will place the case at bar in its proper perspective.

The Health Insurance Plan of Greater New York (H.I.P) is a New York corporation operating under article 9-c of the New York Insurance Law which has as its purpose the provision of medical expense and hospital service indemnity to individual subscribers in the New York City area. Subscribers to HIP pay an annual sum of money at a fixed rate which entitles them to medical practices which are presently under contract to HIP.

On Feb. 4, 1976, HIP applied to the Superintendent of Insurance for permission to increase the annual rate it charges its subscribers by 12 percent. This application was made pursuant to Sec. 255 of the Insurance Law which provides that an article 9-c corporation must obtain the approval of the Superintendent of Insurance prior to changing its subscriber rates. Pursuant to the aforementioned statute, public hearings were held by the Superintendent of Insurance of Feb. 25, 1976. On March 20, 1976, the Superintendent issued an opinion and decision which granted HIP a 12 percent rate increase effective April 1, 1976.

It is the contention of the petitioners that the Superintendent of Insurance may not approve or determine the rates to be charged by HIP unless and until the Commissioner of Health has determined and certified to the Superintendent of Insurance that the rate schedules proposed by HIP are reasonably related to the costs of the efficient production of such services pursuant to Sec. 2807(3) of the Public Health Law. It is the contention of the respondents in opening the petitioners in this proceeding that HIP does not come within that category of medical service providers as defined by the Public Health Law for which the Commissioner of Health must first certify the reasonableness of proposed rates. In point of fact, it is the respondent, commissioner of Health of the State of New York, represented by the Attorney General herein, that posits such an argument.

Accordingly, the dispositive issue between the parties which must be resolved by this court is whether the constituent groups of the Health Insurance Plan of Greater New York, Inc., are "hospitals" as defined by the Public Health Law of the State of New York thereby requiring certification by the Commissioner of Health prior to any approval of rates by the Superintendent of Insurance. If the HIP medical groups do fall into that category, then the decision of the respondent Superintendent of Insurance to grant a 12 percent rate increase is null and void, and if the HIP groups are outside of that particular category, then the instant petition must be dismissed.

The relevant statute which must be considered herein is Public Health Law Sec. 2807(3) which states in pertinent part as follows:

Prior to the approval of such rates, the commissioner shall determine, and in the case of approvals by the superintendent of insurance or the state director of the budget certify to such officials, that the proposed rate schedules for payments for hospital and health-related service, including home health service, are reasonably related to the costs of efficient production of such service . . .

It is the contention of the petitioners, as stated earlier, that the twenty-eight medical group practices constitute hospitals as defined by section 2801(1) of the Public Health Law. The definition upon which they rely is set forth in the statute as follows:

"(1) 'Hospital' means a facility or institution engaged principally in providing services by or under the supervision of a physician or, in the case of a dental clinic or dental dispensary, of a dentist, for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition including, but not limited to, a general hospital, public health center, diagnostic center, treatment center, dental dispensary, rehabilitation center, other than a facility used solely for vocational rehabilitation . . . out-patient department, dispensary and a laboratory or central service facility serving one or more such institutions, but the term hospital shall not include an institution, sanitarium or other facility engaged principally in providing services for the prevention, diagnostic or treatment of mental disability. . . ."

It is argued that the foregoing definition clearly includes facilities such as the medical groups which are under contract to HIP.

The respondents argue that the interpretation of the Public Health Law by the respondent Health Commissioner of the State of New York to the effect that the HIP medical groups are not hospitals as defined therein should be dispositive of the issue. This argument is buttressed by the maxim that courts should affirm an administrative decision if it has a rational basis. In further support, the respondents quote Chief Judge Fuld of the Court of Appeals who stated in Howard v. Wyman (28 N. Y. 2d 434):

"It is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld. . . ."

The Supreme Court of the United States has similarly ruled that courts should affirm administrative decisions if it appears that such decisions have a rational basis (Gray v. Powell, 314 U. S. 402).

Respondents also argue that when physicians combine into groups, as the medical groups under contract to HIP have done, they are not a "hospital" as defined by the Public Health Law, and that this particular point of view was upheld by the Appellate Division, Second Department, in the case of People v. Dobbs Ferry Medical Pavilion, Inc. (40 A. D. 2d 324, aff'd 33 N. Y. 2d 584). In Dobbs Ferry the court held that a facility in which a group of medical practitioners operated an abortion clinic was not a "hospital" as defined by the Public Health Law. The Appellate Division found that the group of doctors was "merely a partnership engaged in a specialized group practice," and not a "hospital."

Finally, the respondents argue that the petitioners are not entitled to an injunction because there are significant disputed issues (Park Terrace Caterers, Inc., v. McDonough, 9 A.D. 2d 113), because they have not made a showing of irreparable harm, (Instrument Systems Corp. v. LaRosa and Sons, Inc., 31 A.D. 2d 766) and because the balance of equities is in the respondents favor (Gilbert v. Burnside, 6 A.D. 2d 834).

The petitioners point out that the Dobbs Ferry case specifically held that a general definition of the word "hospital" which encompassed all private medical groups was unconstitutionally vague, and that groups of individuals engaged in the private practice of medicine were not intended to be covered by the statute. As a result of the Dobbs Ferry case, the Department of Health of the State of New York promulgated new rules which purported to set forth explicit criteria for distinguishing diagnostic centers and treatment centers from private medical groups. The new regulations (10 N.H.C.R.R. Section 600.8) provides as follows:

Criteria for differentiating between the private practice of medicine and a diagnostic center or treatment center under article 28 of the Public Health Law.

(a) Any provision of medical or health services by a provider of medical or health services organized as a not-for-profit or business corporation other than a professional service corporation shall constitute the operation of a diagnostic or treatment center.

(b) It shall be prima facie evidence that a diagnostic center or treatment center is being operated when any provider of medical or health services describes itself to the public as a "center," "clinic" or by any name other than the name of one or more of the practitioners providing those services.

Section 600.08 also sets forth specific criteria to determine whether a facility is a group for the private practice of medicine or a "diagnostic center" or a "treatment center," and these criteria are discussed quite fully by petitioners and respondents.

It is the decision of this court that the petitioners are correct in their interpretation of the statute, and the interpretation by the respondents of the applicable sec-

tions of the Public Health Law is sufficiently faulty as to mandate the granting of the instant petition. The respondents are quite correct in pointing out that an interpretation of a statute by an administrative body cahrged with the administration of that statute should be given great weight and consideration by the courts. And this court is not unmindful of the expertise and wisdom of the respondents in these matters. However, it is also true that plain and simple words should be given a plain and simple meaning, especially where no facts are asserted which would warrant a modification or different interpretation (Becker v. Snowden Development Corp., 66 M2d 1060).

In any article 78 proceeding, this court is limited to deciding whether a determination of a respondent is arbitrary or capricious or affected by some error at law. (Stallone v. Wyman, 61 M2d 4168). It is the view of this court that the approval of the HIP rate increase by the respondent Superintendent of Insurance without first having obtained the certification of the Commissioner of Health constituted the failure by that state officer to perform a duty enjoined by law, and that such violation of lawful procedure was arbitrary, capricious and an abuse of discretion.

This is particularly so in that it is also the view of this court that the reasoning employed by the respondents in determining that the HIP medical groups are not "hospitals" as defined by the Public Health Law is so tortured and follows such a sinuous path of presumption and self-definition as to be totally unworkable. The applicable statutes and regulations clearly cover these groups, and the arguments asserted to the contrary are misplaced and without logical foundation.

Moreover, this court tales judicial notice of the fact that in the last half of the twentieth century the nature of health care and the provision of medical services is such that the classic "hospital" as it was known in earlier times is now merely the hub of the medical services wheel as opposed to it being the entire vehicle for the delivery of such services. For the respondents to continue to adhere to earlier perceptions of medical service delivery systems is to abdicate their responsibility to the public.

Additionally, the declaration of policy and statement of purpose of Article 28 of the Public Health Laws is dispositive of the issue of whether the statute should be liberally construed to include different types of health service concepts or strictly construed. It reads in pertinent part as follows:

> In order to provide for the protection and promotion of the health of the inhabitants of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this Article.

It would appear that the legislative intent as manifested in the language of the statute was for the Department of Health to include as many types of health service vehicles as possible. Under these circumstances, it would appear that it is unavoidable that the respondents have erred in the manner in which the HIP rate increase was approved. In so deciding, this Court makes no judgment as to the validity of the proposed increase itself, as that is not an issue before this Court.

Accordingly, it is the decision of this Court to grant the instant petition, and it is the further decision of this Court that the approval of the HIP rate increase by the respondent Superintendent of Insurance without first having obtained the certification of the Commissioner of Health of the State of New York was a violation of lawful procedure and is accordingly void and without further effect. The respondent superintendent is hereby directed to submit the proposed HIP rate increase with all supporting documentation to the respondent Commissioner of Health of the State of New York within twenty days of the date of this decision and the respondent Commissioner of Health is directed to make a determination as to certification within ten days thereafter. Until such time as the Superintendent of Insurance may properly approve the proposed rate increase if in fact certification is forthcoming from the Commissioner of Health, the rates charged by the Health Insurance Plan of Greater New York for its subscribers prior to April 1, 1976, shall be in effect.

Settle judgment.