



AGG Attorneys Obtain Temporary Restraining Order Protecting Skilled Nursing Facility's Provider Agreements Pending Pre-Termination Administrative Hearing

Alan C. Horowitz, W. Jerad Rissler, J. Ryan Hood and Jordan C. Kearney

On Friday, August 1, 2014, Alan C. Horowitz, Jerad Rissler, Ryan Hood and Jordan Kearney obtained a Temporary Restraining Order ("TRO") prohibiting the termination of a skilled nursing facility's Medicare and Medicaid provider agreements, which had been scheduled for Sunday August 3, 2014. The TRO will remain in effect until August 15, 2014 (unless extended by the Court for good cause) and will prevent the termination of the facility's Medicare and Medicaid Provider agreements pending a pre-termination administrative hearing.

The threatened termination was premised on a survey of the facility concluded on July 11, 2014. Upon receiving notice of the alleged deficiencies, the facility immediately took corrective action, including hiring highly-qualified consultants who have served as federal monitors overseeing long-term care facilities on multiple occasions. These independent consultants analyzed and assessed the sufficiency of the corrective measures taken in connection with the deficiencies alleged in the survey and determined that the facility was in substantial compliance with program requirements. Despite the independent review indicating that the facility was in substantial compliance, the facility's requests for a revisit survey were denied, meaning that the scheduled termination would go forward on Sunday August 3, 2014, without any agency determination whether the facility had reached substantial compliance with program requirements prior to that date.

On Thursday, July 31, 2014, AGG filed an administrative appeal with the Departmental Appeals Board challenging the underlying basis for the threatened termination. On the morning of Friday, August 1, 2014, AGG filed a Verified Complaint seeking injunctive relief that would prevent termination of the provider agreement pending completion of the administrative appeals process. On the afternoon of Friday August 1, 2014, the Court granted a TRO, finding that the facility had met the requirements for that relief. The Court found "a reasonable likelihood that [the plaintiff] will succeed on the merits of its claims against Defendants." (TRO at 2.) The Court found that the plaintiff "has shown a meaningful risk of irreparable harm in the absence of a [TRO]." (Id.) Additionally, the Court found that "[t]he public interest will be served by the issuance of a [TRO]."

Authors and Contributors

Alan C. Horowitz

Partner, Atlanta Office
404.873.8138
alan.horowitz@agg.com

W. Jerad Rissler

Associate, Atlanta Office
404.873.8780
jerad.rissler@agg.com

J. Ryan Hood

Associate, Atlanta Office
404.873.8580
ryan.hood@agg.com

Jordan C. Kearney

Associate, Atlanta Office
404.873.8152
jordan.kearney@agg.com

not if, but how.[®]

About Arnall Golden Gregory LLP

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit www.agg.com.

Atlanta Office

171 17th Street NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Ave., NW,
Suite 1000
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2014. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.