



Client Alert



Contact Attorneys Regarding
This Matter:

William H. Kitchens
404.873.8644 - direct
404.873.8645 - fax
william.kitchens@agg.com

Lanchi Nguyen*
404.873.8520 - direct
404.873.8521 - fax
lanchi.nguyen@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

11th Circuit Decision Allows State to Trump Physicians' Order For Medicaid Care for Children

On April 24, 2009, the 11th Circuit Court of Appeals reversed a district court holding that suggested the state's Medicaid agency would have to provide for the amount of skilled nursing care that child's treating physician had ordered. In rendering its decision, the panel interpreted a federal law that requires states participating in the Medicaid program to provide any screening, diagnostic and treatment services necessary to "correct or ameliorate" the medical conditions of Medicaid-eligible children. The three-judge panel concluded that the state and the treating physician must share the role of determining what services that may be medically necessary or proper for a child's medical condition, noting that the "physician's word on medical necessity is not dispositive."

The original suit, *Moore v. Medows*, 563 F. Supp. 2d 1354 (N.D.Ga. 2008), was filed on behalf of Anna C. Moore, who suffered a stroke in utero that resulted in her development of mental retardation and cerebral palsy among other chronic conditions. Anna, who goes by the name "Callie," received funding for her in-home nursing care from Medicaid for close to ten years. According to her attorneys, she requires constant care to live at home and to attend school three days a week. The suit was filed after the state informed Callie's mother in 2006 that Callie's nursing care would be reduced from 94 hours per week to 84 hours per week, despite the treating physician's recommendations.

The state contends that nursing care hours may be reduced when a patient's medical condition stabilizes, noting that a goal of Medicaid is to train parents and other caregivers to care for their children independently. In response, Callie's attorneys posited that "weaning" patients off necessary nursing services, absent a hospitalization or a decline in medical status, is contrary to the standards established in federal law. In the decision below, presiding U.S. District Judge, Thomas W. Thrash, granted partial summary judgment to Callie, holding that the reduction in Callie's nursing hours was improper. Judge Thrash also concluded that the state was required to provide the amount of nursing services deemed necessary by the treating physician.

In its two-page opinion, which has not been published or signed, the Circuit Court of Appeals panel reversed Judge Thrash's grant of partial summary judgment for Callie and remanded the case for further proceedings. In support of its decision, the panel cited a federal regulation that allows state



Client Alert

Medicaid agencies to “place appropriate limits on a service based on such criteria as medical necessity or utilization control procedures.” Interested parties await further guidance, possibly on remand, regarding the role that treating physicians and the state must play in determining the care provided to the state’s children under the Medicaid program.

*Mr. Kitchens thanks Lanchi Nguyen who assisted significantly with the preparation of this article. Ms. Nguyen is a December graduate of Emory University School of Law and an employee of Arnall Golden Gregory LLP in our healthcare/life sciences practice. Ms. Nguyen also received a M.P.H. from Emory University. She took the Georgia Bar Examination in February and is awaiting her test results.

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.