



## **Court Rules that Medicare and Medicaid Payments to Nursing Home Must Continue Pending Jurisdictional Dispute**

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On October 27, 2015, United States District Judge James S. Moody, Jr. extended a stay of proceedings thereby permitting Bayou Shores SNF, LLC (“Bayou Shores”) to remain viable and continue receiving Medicare and Medicaid revenues pending an appeal before the Eleventh Circuit.<sup>1</sup>

This case began in July 2014 when CMS issued a discretionary termination of Bayou Shores’ Medicare provider agreement. Within days of the CMS termination notice, Arnall Golden Gregory attorneys filed an administrative appeal as well as an Emergency Temporary Restraining Order (TRO). The TRO was granted for 14 days and within an hour of its expiration, Bayou Shores filed Chapter 11 bankruptcy.<sup>2</sup> The issue of whether CMS could terminate the facility’s Medicare provider agreement bounced back and forth between the District Court for the Middle District of Florida, the U.S. Bankruptcy Court for the Middle District of Florida and even a Florida State court. (The Florida Agency for Health Care Administration simultaneously sought to terminate the facility’s Medicaid agreement.)

After the Bankruptcy Court held that CMS could not terminate the facility’s provider agreement, the U.S. Attorney’s Office sought relief in the District Court, which reversed the Bankruptcy Court, holding that it lacked jurisdiction and therefore could not prohibit CMS or AHCA from terminating the Medicare and Medicaid provider agreements, respectively. Bayou Shores next appealed to the Eleventh Circuit.

The issue of whether 42 U.S.C. § 405(h) proscribes bankruptcy jurisdiction under 28 U.S.C. § 1334 is an issue of first impression in the Eleventh Circuit. In granting the stay which permits Bayou Shores to continue operating pending a decision from the Eleventh Circuit, the district court weighed several factors that favored Bayou Shores.

The district court held that “absent a stay, these high risk patients would be irreparably harmed because they require a skilled facility that can accommodate their needs. They also need stability and a daily routine that does not change.” Judge Moody further noted that “Bayou Shores is operating in substantial compliance with all applicable regulatory requirements.” At the October 26, 2015 evidentiary hearing, there was compelling testimony that many of the residents’ family members and/or guardians refused to transfer residents “because they are happy with Bayou Shores’ care.”

Judge Moody stated that “there is a significant factor of human dignity at issue here that this Court cannot ignore.” Consequently, he ordered both Medicare and Medicaid to continue to pay for existing residents’ care pending the decision of the Eleventh Circuit regarding the jurisdictional question. Because there is a split in the circuit courts on the jurisdictional issue, some have speculated that this case may wind up before the U.S. Supreme Court.

As a footnote to the legal wrangling on multiple levels that began in July 2014, before the first appeal and TRO were filed, counsel for Bayou Shores attempted to meet with the CMS official who approved the discretionary termination. Counsel and Bayou Shores were prepared to attempt to amicably resolve all issues and avoid the termination. However, CMS refused to meet and the

<sup>1</sup> Bayou Shores operates the Rehabilitation Center of St. Petersburg, a skilled nursing facility located in Florida.  
<sup>2</sup> AGG only filed the administrative appeal, the TRO and an earlier appeal before the Eleventh Circuit.

current legal quagmire ensued. Ironically, as noted above, almost a year and a half after CMS attempted to terminate Bayou Shores, Judge Moody found that it is in compliance with all applicable laws. No matter what the outcome of the Eleventh Circuit is, the residents who have lived in uncertainty since July 14, 2014 surely deserve better.

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