

Frank Fedor

## cutting to the heart of the theory the latest on charity care litigation

### CHARITY CARE LAWSUIT FAST FACTS

**Number of charity  
care lawsuits filed  
in federal court:**

70

**Number of states with  
charity care lawsuits:**

27

**States with highest  
number of charity  
care lawsuits:**

Georgia (11)

Florida (6)

Pennsylvania (6)

*Source: Health Law Reporter,  
Nov. 22, 2004.*

**The nation's not-for-profit hospitals, which represent 85 percent** of the industry, are at the center of a growing debate. As of November 2004, 70 lawsuits had been filed in federal court, with the cases targeting nearly 300 facilities for their billing and collection practices toward uninsured patients. Presenting an array of novel legal theories, the class action attorneys representing these patients claim that tax-exempt hospitals either breach a contract or violate a law when they bill and collect their full charges from the underinsured while accepting far less from their contracting insurers. The theme is that tax-exempt hospitals should provide services to those least able to pay at rates that are less than those paid by insurers.

Although these cases are being referred to as "class actions," none of the plaintiffs has yet brought a motion to certify a class. An attempt to centralize the litigation of the cases in a single federal district was rejected by the Judicial Panel on Multidistrict Litigation because it would not serve the convenience of the parties and witnesses or further the just and efficient conduct of the litigation (*In re Not-for-Profit Hospitals/Uninsured Patients Litigation*). So for now the cases proceed separately and on behalf of only the individually named plaintiffs.

All of the cases contain several *claims* or *causes of action*, each of which represents a separate legal theory under which the plaintiffs claim relief. Most of the cases have been decided through a motion to dismiss, which allows the court to eliminate a claim early in the case because it is legally defective, but also requires the court to accept as true all facts that are contained in the plaintiff's pleadings. Despite this high standard, the following federal law-based claims have been rejected at this early stage.

#### **Breach of "Third-Party" Contract**

The primary argument made by the patients is that they are the third-party beneficiaries of the hospital's "agreement" with the United States, state, and local governments. This contract is allegedly made when the hospital qualifies for tax-exempt status under §501(c)(3) of the Internal Revenue Code, and breached

when healthcare services are furnished to indigent or underinsured patients, the alleged beneficiaries of the tax-exempt status, without regard to their ability to pay and at charges higher than those paid by insurers.

This claim has been uniformly rejected on several grounds (*Burton v. William Beaumont Hospital*; *Darr v. Sutter Health*; *Amato v. UPMC*). No earlier case had ever ruled that a not-for-profit organization's qualification for tax-exempt status under §501(c)(3) causes it to enter into a "contract" with the United States. Indeed, there is a presumption against a statute creating or authorizing a "contract" with the United States unless the statutory language expressly says so.

Moreover, the hospitals pointed out that the IRS "charitable purposes" standard for not-for-profit hospitals is "community benefit," not "charity care." The IRS adopted this broader "community benefit" standard of "the promotion of health . . . to the community as a whole even though the class of beneficiaries eligible to receive a direct benefit . . . does not include all members of the community, such as indigent members . . ." in the place of an earlier requirement of "caring for patients without charge or at rates below cost." This fact cuts to the heart of the plaintiffs' theory.

#### THE CASES CITED

Following are the citations for the cases referred to in this article. For links to the actual court decisions, go to [www.caringforcommunities.org/caringforcommunities/classaction/decisions.html](http://www.caringforcommunities.org/caringforcommunities/classaction/decisions.html).

- > *Amato v. UPMC*, No. 04-1025 (W.D. Penn. 2004) (Recommendation of Magistrate)
- > *Burton v. William Beaumont Hospital*, 2004 WL 2790624 (E.D. Mich. 2004)
- > *Darr v. Sutter Health*, No. C04-02624 WHA (N.D. Calif. 2004)
- > *In re Not-for-Profit Hospitals/Uninsured Patients Litigation*, 341 F.Supp.2d 1354 (Jud. Pan. Mult. Lit. 2004)
- > *Kizzire v. Baptist Health System, Inc.*, 343 F.Supp.2d 1074 (N.D. Ala. 2004)
- > *Woodrum v. Integris Health Inc.*, W.D. Okla. No. CIV-04-835 (Nov. 30, 2004), as reported in *BNA Health Plan & Provider Report*, Vol. 11, No. 1 (Jan. 5, 2005)

A closely related argument is that patients have an implied right to enforce §501(c)(3). This was also rejected because there was no congressional intent to create a private right of action, especially when Congress had expressly established such rights in other parts of the Internal Revenue Code. Similarly, if the hospital had entered into a charitable trust (an argument similar to the third-party beneficiary claim, which the court rejected), the Attorney General was the proper party to enforce it "so that the trustees may not be vexed by frequent suits, possibly based on an inadequate investigation and brought by irresponsible parties" (*Burton v. William Beaumont Hospital*).

#### Violation of the Federal Debt Collection Practices Act

Plaintiffs also claim that hospitals violate the Federal Debt Collection Practices Act because their "overcharging uninsured patients and collecting debts is an unconscionable, discriminating, misleading, and deceptive creation and collection of inflated debts from uninsured patients." These claims were quickly dismissed because the act does not apply to a creditor collecting its own debt (*Burton v. William Beaumont Hospital*; *Darr v. Sutter Health*).

#### Violation of EMTALA

Plaintiffs also claim that hospitals violate the Emergency Medical Treatment and Labor Act (42 U.S.C. §1395dd) when they condition the provision of medical treatment on the patient's ability to pay by delaying screening and treatment until the patient signs an agreement to pay "in full for unspecified and undiscounted charges." These claims were dismissed because the patients did not allege "personal harm" as required by EMTALA, but claimed only financial loss (*Burton v. William Beaumont Hospital*; *Kizzire v. Baptist Health System, Inc.*; *Amato v. UPMC*). Given the level of EMTALA enforcement and the length of time during which hospitals have adapted their policies to remain in compliance with EMTALA, it would be unusual if a hospital's emergency department procedures allowed for systemic violations.

One case did let the EMTALA claim survive the motion to dismiss, but only because procedural rules required the court to accept as true the plaintiffs' allegation that the hospital would not provide

screening or treatment *unless or until* the patients signed a contract (*Burton v. William Beaumont Hospital*). These plaintiffs would have to prove these facts at trial.

**Violation of Equal Protection**

Some plaintiffs also claim that hospitals violate their Fifth and Fourteenth Amendment right to equal protection when the hospital applies "invidious discrimination against uninsured patients" by charging them "considerably more for their health care than insured patients." A private right of action for such equal protection violations may arise under 42 U.S.C. §1983, but only if the state participates in the discrimination. The only §1983 claim brought so far was rejected because no such "state action" was alleged (*Burton v. William Beaumont Hospital*).

**Res Judicata**

A procedural basis for dismissing a case is *res judicata*, which simply means that the case has already been decided and may not be litigated a second time. When a party is sued, in addition to defending itself it

must also assert, as "compulsory counterclaims," all claims it has against the plaintiff that are related to the facts of the dispute. If these compulsory counterclaims are not brought, they are waived.

In one of the charity care cases, the individual plaintiffs had already been sued in state court by the defendant hospital to collect payment of the hospital bills. In that case the patient defendants had failed to contest this state suit, and the hospital had been awarded a default judgment by the state court. In the later federal case considering the charity care issues, the court dismissed all federal and state law claims (except for the EMTALA claim, which was dismissed on the basis described above) because they were waived in the earlier state court case and thus barred by the doctrine of *res judicata* (*Kizzire v. Baptist Health System, Inc.*).

**What Happens Next?**

No court has yet decided the state law-based contract claims brought by the plaintiffs. These allege that by

admitting a patient, the hospital agreed either expressly or implicitly to charge patients "no more than a fair and reasonable charge for such medical care." According to claims, this contract is then breached when the hospital charges the patients "the highest and full undiscounted" charges. Plaintiffs additionally claim that this conduct breaches the covenant of good faith and fair dealing that is implied by law into all contracts. This covenant requires each party to do nothing that will deprive the other of the benefits of the contract. Although the implied covenant may not conflict with the express terms of the contract, this never dissuades a plaintiff from arguing all manner of nonexisting obligations that are claimed to be "implied" in the contract. No federal court has yet decided these state law issues, either because the court refuses to take jurisdiction of them (and thus dismisses the federal case so the plaintiffs can refile in state court) or because the issues were not briefed and are left to future proceedings in the federal court.

Hospitals are off to a good start and their momentum is building. In dismissing a case against Centura Health early this year, a federal district court judge in Colorado admonished the plaintiffs and their lawyers for "seeking to use this court as a forum to reform the healthcare system" ("Judge Throws Out Centura Lawsuit," *Denver Post*, Jan. 5, 2005). Another federal district court judge in Oklahoma awarded the hospital \$40,000 in attorney's fees payable by the plaintiffs or their lawyers, with the comment that "[t]he circumstances present here strongly suggest that this case is one which is more attorney driven than client driven" (*Woodrum v. Integrus Health Inc.*).

Other cases have been voluntarily dismissed by plaintiffs. Yet these are but the opening battles in the war and there are many twists and turns to come. Several of the dismissed federal cases are being appealed. The state law claims will be decided. Not-for-profit hospitals should adopt, apply, and monitor their charity care policies and stay tuned for further developments from the charity litigation front. ■

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