

## Update on Mandamus Case

In the wake of a [state budget bill](#) that preserved but did not increase Medicaid funding for SNFs, members are understandably interested in the status and potential outcome of our mandamus case.

Current status. The Supreme Court has not yet rendered a decision. As we reported recently in *News Bites*, the state filed a motion to dismiss the case. The state asserted that the issue is moot because we filed our petition during the last budget, but now a new budget is in place. Last week, we filed [a response](#) asking the court to deny the state's motion and proceed to a final decision.

A petition for a writ of mandamus is a claim that the government is not fulfilling a legal obligation and a request that the court require the government to follow the law. Our case is not about the 2023 budget bill per se, it is about interpretation and application of a [specific statute](#) governing calculation of Medicaid rates. The statute happened to be amended in the last budget bill, but it remains in full force and effect today. We are asking the court to require that the Department of Medicaid (ODM) fulfill what we believe to be their legal obligation under the statute.

Timing. We hope the court will decide the case in the next 60 days, but the timing is totally under the court's control and not announced in advance. The court could deny the state's motion to dismiss and issue a decision on the merits at the same time. It is also possible that the motion delays the final decision.

Potential outcome and impact. The outcome of the mandamus case is by no means assured. We could win or lose. We believe our position is very strong, but the court could conclude otherwise.

If we prevail, we expect the court to issue a writ mandating that ODM pay Ohio SNFs rates calculated according to the correct interpretation of the statute, retroactive to July 1, 2023.

For most SNFs – those that qualified for quality incentive payments during the rate periods from July 1, 2023, to the present - the corrected rates would be higher. More funding would be allocated to quality incentive payments, which would translate into higher dollar values per quality point during each rate period.

Across the universe of providers, we estimate the average rate impact would be somewhere around \$19 per day. This average includes buildings that would see no impact in one or more rate periods because they did not qualify for quality incentive payments. Failure to qualify could be a result of the 25<sup>th</sup> percentile cut-off, a change of operator (CHOP), or another reason.

Retroactive and prospective payments. If the writ is granted, both the structure and timing of retroactive payments are unclear. We feel the most logical approach would be for ODM to pay a lump sum to each qualifying provider. The lump sum would be the sum of the differences in the provider's rates over each of the five rate periods multiplied by the number of Medicaid days paid during each period.

In our filings, we asked the Supreme Court to set a 30-day deadline for the retroactive payments. However, as a practical matter, it may take considerably longer for ODM to go through the very complex exercise of determining how much each provider is owed for all the past periods. If we win the case, we will offer to help the state with these calculations.

In addition to the retroactive impact, the writ would have a prospective effect. To comply with the statute as interpreted by the court, ODM would have to recalculate each qualifying SNF's current quality incentive payment and pay the higher rate on a go-forward basis.

What winning would not do.

Based on our current understanding of the case, which could change based on the court's decision and subsequent implementation, a writ of mandamus would not:

- Eliminate or change the 25<sup>th</sup> percentile cut-off.
- Give retroactive money to a provider who did not qualify for a quality incentive payment during one or more of the relevant semi-annual rate periods (July 1, 2023, to present).
- Give retroactive money to a provider who did not operate the facility during the relevant semi-annual rate period.
- Ensure that all providers receive retroactive payments within 30 days.