Jan. 22, 2021: Judicial Advocacy Update

U.S. Supreme Court: State law can require PBMs to pay fair amount

In a win for patients and physicians, state lawmakers can continue to legislate certain aspects of how pharmacy benefits managers (PBM) operate in their states, the U.S. Supreme Court recently ruled.

As the Litigation Center of the AMA and State Medical Societies and Arkansas Medical Society explained in a brief to the high court, it's important to let states govern these entities because PBMs increasingly play a pivotal role in prescription-drug pricing for drug benefits administration.

Without laws like the one that was challenged in Arkansas, PBMs could operate with minimal transparency when it comes to drug pricing and other decisions, the AMA Litigation Center brief told the Supreme Court in the case, Rutledge v. Pharmaceutical Care Management Association. That would make it tough for physicians to determine which treatments a particular payer preferred, what level of cost-sharing their patients would bear, and whether medications were subject to sometimes unreasonable utilization-management requirements.

"This lack of transparency in patients' drug coverage can interfere with sound medical practice and may lead to delays in and other disruption to necessary medical treatment," the brief says. "Thus, the ability of patients and their physicians to have the information and even the latitude they need to make key decisions regarding medication has been hampered by the sort of practices that state legislation of PBMs can properly address."

The Supreme Court's unanimous decision overturned an opinion from the 8th U.S. Circuit Court of Appeals that said the federal Employee Retirement Income Security Act of 1972 (ERISA) preempted the Arkansas law.

Read the full story here.

Fate of independent medical ethics decisions in court's hands

If a Texas court ruling is allowed to stand, the state's hospitals and doctors will have no room to make
end-of-life care decisions based on independent medical ethics or individual conscience, physicians and other stakeholders tell the U.S. Supreme Court.

The Litigation Center of the AMA and State Medical Societies joined the Texas Medical Association and more than a dozen other organizations with different perspectives in filing an amicus brief that urges the U.S. Supreme Court to overturn the Court of Appeals of Texas, Second District ruling that classifies private hospitals and doctors as "state actors" who can be held liable for damages under the federal civil rights law for end-of-life care decisions they make.

Physicians say the lower court ruling opens the door to litigation abuse, holding that doctors and hospitals could be held liable even if they follow carefully laid out steps in the Texas Advance Directives Act (TADA)—a law similar to advance directives laws in other states. Numerous Texas stakeholders helped craft the law that balances everyone's needs: Medical providers have a path to withdraw from providing an intervention violating their ethics or deeply held sense of morality and patients or their decision-makers have a structured framework to seek a transfer to a medical provider willing to provide the requested intervention.

"By classifying this private hospital as a state actor, the court created an ongoing role for itself—and future state and federal courts—in second-guessing these most private end-of-life decisions. And because its state-action holding is of federal constitutional dimension, there is nothing that the Texas Legislature or any state legislature could do to restore the full protective effect of this statute. Only this court can hold the line on state action," the brief tells the U.S. Supreme Court.

In addition to physician organizations, pro-life organizations, medical and nursing associations, children's hospitals and pediatricians, hospitals and hospital systems and other stakeholders in the patient care system jointly filed the brief in the case, *Cook Children's Medical Center v. T.L., a Minor*. The hospital asked the U.S. Supreme Court to hear the case after the Supreme Court of Texas declined to hear the appeal.

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