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Q&A

Rule 19: Joinder of Necessary Parties

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Q. In our state, we have seen problems with coverage of services through our home and community based waivers. We also have concerns about limitations on the scope coverage of certain state plan services. We have considered filing suit against the state Medicaid agency to address these problems. Moreover, given that waivers and state plans are approved by the federal Medicaid agency, we have questions about whether to sue the state Medicaid agency, the federal government, or both. Have courts considered whether state Medicaid agencies or the U.S. Department of Health and Human Services (HHS) are necessary parties in Medicaid suits?

A. Yes. Because Medicaid is a cooperative federal and state program, the state and federal agencies both play a role in administering the program and making decisions that impact beneficiaries. Courts have considered whether an absent state Medicaid agency or an absent HHS are necessary parties. Examples of cases are discussed below, along with a review of Rule 19 of the Federal Rules of Civil Procedure.

Discussion

The Medicaid program is a cooperative venture between the federal government and the states. Federal and state law govern the program and each state's Medicaid program operates pursuant to a state plan that is approved by the federal Medicaid agency. State expenditures are also matched by federal dollars, as long as the state complies with federal requirements. Therefore, many aspects of a state's program are not only governed by federal law, they are actually approved by the federal agency. This is particularly true as more states have applied for permission to operate 1115 demonstration waivers to expand eligibility, offer managed care, or charge increased

premiums.[1]

Advocates have therefore had to determine the appropriate defendant in cases challenging certain aspects of their states' Medicaid programs. Moreover, even after making a determination, advocates may face arguments from defendant state agencies that the federal agency is a necessary party. The court itself may also raise the issue. In order to consider fully whether an absent agency is a necessary party, therefore, advocates should have an understanding of Rule 19.

Rule 19 and Necessary Parties

Rule 19 of the Federal Rules of Civil Procedure governs the question of whether a party not originally named in a federal civil suit must be joined to the suit as a necessary party. The Rule's purpose and the analysis to determine whether a party *must* be joined are therefore different than those considered under Rule 20, which concerns when an absent party *may* be joined.

The Rule provides that a party must be joined if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
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> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
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> (i) as a practical matter impair or impede the person's ability to protect the interest; or
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> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.[2]

Pursuant to the Rule, courts often apply a three-step process to determine whether a party should be joined under Rule 19.[3] Generally, the analysis is as follows: First, a court determines whether an absent party is "necessary" within the meaning of Rule 19, that is, whether the absent party is subject to mandatory joinder under the Rule. Second, if an absent party is determined to be necessary, the court must then determine whether joinder is "feasible," meaning whether the party could be joined without preventing the court from being able to hear the case. Third, if joinder is not

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[1] 42 U.S.C. § 1315. For detailed discussion, analysis, and tracking of 1115 requests, *see* National Health Law Program, "1115 Waivers," http://www.healthlaw.org/issues/medicaid/waivers (last visited March 3, 2018).

[2] Fed. R. Civ. P. 19 (2018).

[3] 4 James Wm. Moore et al., *Moore's Federal Practice,* § 19.02[3][a], at 19–17 (3d ed. 2003, upd. 2018).

feasible, the court must decide whether the absent party is "indispensable," i.e., whether the action cannot continue in "equity and good conscience" without that party. If so, the court must dismiss the action.[4] These steps are discussed in more detail below.

In determining whether a party is necessary, courts generally consider three questions. The first is whether the court will be able to provide "complete relief" to existing parties (not the absent party) if the absent party is not joined.[5] "Complete relief" has been interpreted as relief that would satisfy the objectives of the litigation.[6]

The second question is whether "as a practical matter" the interests of the absent party will be negatively impacted if the suit goes on without it.[7] This requires both that an absent party claim an interest in the disposition of the suit and that the interest be "legally protected."[8] Still, in some cases, an absent party may be necessary if that party is likely to be adversely impacted by relief between existing parties. For example, the Supreme Court held that a group of white firefighters were necessary parties because they were unable to challenge application of consent decrees, entered into on behalf of a group of black firefighters as a result of class litigation, that would have practically impacted "employment or promotion [interests] even though [the absent parties were] not bound by the decrees in any legal sense."[9]

The third consideration is whether continuing litigation without the absent party presents risk of existing parties "incurring double, multiple, or otherwise inconsistent obligations."[10] This requires a showing that existing parties are at high risk of inconsistent obligations, such as different injunctions issued by different courts.[11]

If an absent party is necessary, courts must then determine whether it is feasible to add the party to litigation. If joining the party would not interfere with proper adjudication, the court must add the absent party.[12] There are a number of circumstances when it is not feasible; for example, if a party deprives the court of subject matter jurisdiction by

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[4] *Id. See also United States v. Bowen*, 172 F.3d 682, 688 (9th Cir. 1999).
[5] Fed. R. Civ. P. 19(a)(1)(A). *See also General Refractories Co. v. First State Ins. Co.,* 500 F.3d 306, 313 (3d Cir. 2007); *MasterCard International Inc. v. Visa International Service Ass'n, Inc.,* 471 F.3d 377, 386 (2d Cir. 2006).
[6] *Disabled Rights Action Comm. v. Las Vegas Events, Inc*., 375 F.3d 861, 879 (9th Cir. 2004) (finding the absent party was not a necessary party because an order directed at existing parties would have achieved the objective of litigation).
[7] Fed. R. Civ. P. 19(a)(1)(B)(i).
[8] See *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 970 (9th Cir. 2008), quoting *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990). Courts generally require that such interests be "substantial." *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1022 (9th Cir. 2002).
[9] *Martin v. Wilks*, 490 U.S. 755, 771 (1989).
[10] Fed. R. Civ. P. 19(a)(1)(B)(ii).
[11] *See, e.g., Dawavendewa v. Salt River Project Agr. Improvement & Power Dist.*, 276 F.3d 11150, 1158 (9th Cir. 2002).
[12] Fed R. Civ. P. 19(a)(2).

destroying diversity between parties.[13] Other issues weighing against feasibility of joinder include necessary party's claim of sovereign immunity, lack of personal jurisdiction over necessary party, and necessary party's objections that would render venue improper.[14]

If joining the party is not feasible for these or other reasons, the court decides whether it is more appropriate to proceed with the action absent the necessary party or to dismiss the case for failure to join a necessary party.[15] The decision whether to proceed or dismiss involves a determination by the court of whether the case can go on "in equity and good conscience" without the necessary party.

The court must consider four factors provided in Rule 19: "the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;" "the extent to which any prejudice could be lessened or avoided by… protective provisions in the judgment[,] shaping the relief[,] or other measures;" "whether a judgment rendered in the person's absence would be adequate;" and "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder."[16]

The Supreme Court has stressed that application of Rule 19(b) does not involve a "prescribed formula" for determining whether litigation should continue or be dismissed, noting that the decision must be based on factors relevant to particular cases, including "some… substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests." It has also emphasized four interests as especially important to the analysis, including: the plaintiff's interest in forum; the defendant's interest in avoiding "multiple litigation[,] inconsistent relief, or sole responsibility for a liability he shares with another;" interests of the absent party; and court and public interests in "complete, consistent, and efficient settlement of controversies."[17]

Necessary Parties in Medicaid Cases: Examples

State Medicaid agencies have argued that, in some cases, the U.S. Department of Health and Human Services (DHHS) or the Centers for Medicare & Medicaid Services (CMS) may be necessary parties in actions against a State Medicaid agency or its officials. In other cases, questions have arisen whether absent state Medicaid agencies were necessary parties in litigation against CMS.

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[13] *See, e.g., Glancy v. Taubman Ctrs., Inc.*, 373 F.3d 656, 666 (6th Cir. 2004).
[14] Fed. R. Civ. P. 19(a)(3); *see, e.g., Republic of Philippines v. Pimental*, 553 U.S. 851, 865 (2008); *Yashenko v. Harrah's NC Casino Co.*, 446 F.3d 541, 552-553 (4th Cir. 2006); *Hendricks v. Bank of Am.*, 408 F.3d 1127, 1135 (9th Cir. 2005).
[15] *See* Fed. R. Civ. P. 19(b); *Provident Tradesmens Bank & Tr. Co. v Patterson*, 390 U.S. 102, 109 (1968).
[16] Fed. R. Civ. P. 19(b).
[17] 390 U.S. at 118 –119 (1968). *See also Bakia v. County of Los Angeles*, 687 F.2d 299, 301 (9th Cir. 1982) (holding the determination of whether an absent party is a necessary party is not formulaic and is instead "heavily influenced by the facts and circumstances of each case.")

An example of the first argument is found in *Parents' League for Effective Autism Services v. Jones-Kelley*.[18] Plaintiffs sued two state agency defendants—the Director of the Ohio Department of Job and Family Services and the Director of the Ohio Department of Mental Health — to prevent implementation of administrative rules that limited Medicaid coverage of behavioral health services for children with autism spectrum disorder. The state defendants filed a motion to dismiss, asserting in part that the case should be dismissed if plaintiffs would not consent to joining CMS as a required party pursuant to Rule 19.

Defendants argued that they made the change in coverage policy because CMS had communicated to the state concerns about whether the behavioral health services were properly covered by Medicaid and, therefore, whether federal reimbursement would be available to the state.[19] Accordingly, Defendants argued that CMS must be included as a party; that complete relief would be impossible without joining them, because CMS had a "financial and policy stake in the outcome of this case," and because "disposition of the case without CMS creates a risk of inconsistent obligations" for the state agency officials.[20] The state defendants further argued that the court would be unable to confer "complete relief" without CMS. Moreover, they asserted that there was substantial risk of inconsistent obligations. If the court ordered the state agency to provide the services and an absent CMS determined that the services were not covered by Medicaid, the agencies argued, any order could result in millions of dollars of financial obligations for State defendants.[21] Moreover, they argued that the state would be unable to pay for these services without approval of federal funding.[22]

Plaintiffs attempted to rebut these arguments by asserting that complete relief could be provided without joining CMS, that defendants' reasons for joining CMS were "premature" and "speculative," and that the "financial and policy stake" allegedly held by CMS was insufficient. Moreover, plaintiffs argued that joinder would be premature because CMS had not made a definitive decision that the services could not be covered, giving the state ample opportunity to persuade CMS that the services should be covered under Medicaid. In addition, plaintiffs argued that federal Medicaid law required coverage of the services, notwithstanding CMS' suggestions to the contrary.[23]

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[18] Defendants' Joint Motion to Dismiss, at 6, *Parents League for Effective Autism Servs. v. Jones-Kelley*, (No. 2:08-CV-421 (S.D. Ohio) (on file with NHeLP).
[19] *See* Defendants' Joint Reply Brief Regarding Their Motion to Dismiss, at 5, *Parents League for Effective Autism Servs. v. Jones-Kelley*, (No. 2:08-CV-421), (S.D. Ohio 2008) (on file with NHeLP).
[20] Defendants' Joint Motion to Dismiss, at 7, *Parents League for Effective Autism Servs. v. Jones-Kelley*, (No. 2:08-CV-421), (S.D. Ohio) (on file with NHeLP).
[21] *Id*. at 7.
[22] *Id*., citing *Lopez v. Arraras*, 606 F.2d 347, 352 (1st Cir. 1979) (Court required joinder of Secretary of U.S. Dept. of Housing and Urban Development when Secretary had the "final say as to the availability of requested funds," such that without the Secretary, any relief would be "hollow" and incomplete.).
[23] Plaintiffs' Memorandum in Opposition to Defendants' Joint Motion to Dismiss, at 7-13.

Despite these arguments, however, the court ultimately agreed with the state defendants' reasoning and held that CMS was a necessary party.[24]

A case in Maine raised a different argument - whether an absent State Medicaid agency or its officials should be joined under Rule 19 in an action against a federal agency. In *Bourgoin v. Sebelius*, a group of Medicaid beneficiaries sued the Secretary of HHS, challenging her approval of a Medicaid State Plan Amendment (SPA) terminating their Medicaid eligibility. Maine's Medicaid agency was not a party. The plaintiffs and the federal defendant both took the position that the state agency was not a necessary party. The state agency made no attempt to intervene. Regardless, the court held that the state agency was a necessary party and ordered plaintiffs to add the agency as a defendant. [25]

The court cited two primary reasons for its decision. First, it reasoned Maine might not have to comply with an order against the federal government and that it was therefore likely Maine officials might choose not to reinstate benefits at issue in the case, even following a favorable ruling for plaintiffs. Because the court found it likely that Maine and its officials might continue their current practices despite an injunction against federal defendants, it held that if that happened, "no tangible benefit would result" from a favorable ruling for plaintiffs, meaning that complete relief could not be granted.[26]

Second, the court held that adjudication without Maine would impair or impede its ability to protect its interest.[27] Even though existing defendants were defending approval of Maine's Medicaid policies, those defendants were not defending the particular constitutional interests claimed by the state, meaning that these interests were unprotected in Maine's absence. As such, the court held that Maine officials were necessary parties.[28]

Conclusion and Recommendations

When contemplating a challenge that implicates an approved state plan or waiver, advocates should:

- Become familiar with Rule 19 rulings in your jurisdiction, particularly whether there are any decisions considering whether federal agencies are necessary parties in Medicaid cases.

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[24] Order, at 6, *Parents League for Effective Autism Servs. v. Jones-Kelley*, (No. 2:08-CV-421), 2008 WL 2796744 (S.D. Ohio 2008) (on file with NHeLP).
[25] 296 F.R.D. 15, 30 (D. Me. 2013). For briefing, *see* Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment, and Plaintiffs' Motion for Summary Judgment and Supporting Memorandum of Law, at 26-27; Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment and Supporting Memorandum of Law, at 19-20.
[26] 296 F.R.D. at 29-30.
[27] *Id*. at 30.
[28] 296 F.R.D. at 30.

- Consider whether complete relief is possible without both federal and state agencies.
- Given that suing the federal agency will bring more attorneys with significant experience, if you pursue this path, consider bringing in additional counsel, such as a private firm.
- Be aware that states have argued that managed care plans are necessary parties, with varying results and consider whether a plan must or should be joined.[29]
- Consult with the National Health Law Program and NDRN to consider the implications of choosing agency defendants in these cases.

[29] *See, e.g., A.H.R. v. Wash. State Health Care Auth.,* (CASE NO. C15-5701JLR), 2016 WL 98513 (W.D. Wash. 2016) (holding that managed care plan serving all of the plaintiffs was not necessary party).