



# COUNTY OF LOS ANGELES

## CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

September 16, 2002

### MEMBERS OF THE BOARD

Jacqueline White  
Chief Administrative Office  
Lloyd W. Pellman  
Office of the County Counsel  
Maria M. Oms  
Auditor-Controller

Honorable Board of Supervisors  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Re: **County of Los Angeles v. Bonta**  
**Los Angeles Superior Court Case No. BS 068 195**

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$361,480 to be paid to the County.
2. The Auditor-Controller be directed to accept payment to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Jacqueline White, Chairperson  
Los Angeles County Claims Board

JW/fsl

Enclosures

MEMORANDUM

August 20, 2002

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: ANITA D. LEE *adl*  
Principal Deputy County Counsel  
Public Services Division

RE: County of Los Angeles v. Bonta  
**Los Angeles Superior Court Case No. BS 068195**

AUTHORITY  
REQUESTED: County will receive \$361,480

COUNTY  
DEPARTMENT: Department of Health Services

CLAIMS BOARD ACTION:

Approve

Disapprove

Recommend to Board of  
Supervisors for Approval

\_\_\_\_\_, Chief Administrative Office

**JACQUELINE WHITE**

\_\_\_\_\_, County Counsel

**LLOYD W. PELLMAN**

\_\_\_\_\_, Auditor-Controller

**MARIA A. OMS**

on \_\_\_\_\_, 2002

## SUMMARY

This is a recommendation to settle litigation initiated by the County against the State Department of Health Services ("SDHS") in connection with a dispute over the proper amount of reimbursement owed to five County hospitals as a result of treating certain Medi-Cal beneficiaries during fiscal year 1994-95.

## LEGAL PRINCIPLES

SDHS had certain obligations to reimburse the County hospitals for care they rendered to Medi-Cal beneficiaries on administrative days. An administrative day patient is one who is treated at an acute care hospital, although he or she requires only a lower level of care, because no proper placement is available. The County contends that these authorities require such reimbursement to be based on the cost of providing the care; SDHS contends that it is only obligated to pay certain pre-determined rates which are unrelated to the hospital's costs.

## SUMMARY OF FACTS

The County hospitals appealed through Medi-Cal's normal administrative appeal process the rate at which Medi-Cal paid them for routine services to administrative day patients, relying on federal law which specified that, under special circumstances, such payment should be based on reasonable costs. They also appealed the lack of payment for certain ancillary services on several grounds, relying principally on a state regulation which suggests that cost reimbursement was owed. The County hospitals had not been paid anything for certain ancillary services provided to administrative day patients. At the administrative hearing, the parties stipulated that once the proper basis for calculating payment for ancillary care was determined, SDHS would work with the County to determine the amount owed.

After the hearing, the Director of SDHS ruled that the rate used to compensate the County hospitals for routine care was appropriate under state law and that she was without authority to substitute the federal standard. Additionally, the Director ruled that the ancillary care was to be reimbursed pursuant to a fee schedule, not costs, as contended by the County.

In implementing the Director's decision, SDHS disregarded the stipulation made at the hearing, and reconciled the County hospitals' accounts for this fiscal year without providing any additional reimbursement for ancillary care.

## DAMAGES

The County hospitals originally sought supplemental reimbursement worth several million dollars, based on the County's contention that reimbursement should be based on costs. However, a reevaluation of the situation in light of the administrative decision, suggests that the County is owed approximately \$300,000 for the ancillary services.

## STATUS OF CASE

The County raised with SDHS its failure to properly implement the Director's decision, and SDHS personnel acknowledged the error. The parties then worked out an agreement under which SDHS would cost reimburse a few specific ancillary services and would pay the County Hospitals \$31.00 per administrative day for the other ancillary services at issue. The aggregate total of these payments is \$361,480 for all five hospitals. In exchange, the County Hospitals would agree to give up their other claims and waive their rights to a more precise determination of the amount due under the Director's decision. Efforts were then made to confirm the cost- reimbursement amounts and to memorialize the agreement into a legally enforceable form. However, this could not be accomplished before the County's last day to file a formal appeal of the Director's decision.

To protect the County's rights while pursuing the settlement, an action appealing the Director's decision was filed in Superior Court. However, because the County anticipated being able to finalize the settlement without intervention from the Court, and to avoid unnecessary costs, SDHS was not served with a copy of the appeal, and no efforts have been made to move the litigation forward. Recently, the Court set an order to show cause why the case should not be dismissed for failure to prosecute. The hearing on this order was set for October 15, 2002, to allow the parties time to finalize their settlement and for the County to voluntarily dismiss the case.

Both SDHS and the County Department of Health Services have agreed to the text of a settlement agreement, and SDHS is in the process of executing that agreement.

## EVALUATION

The settlement would require the County to withdraw its claims that the Director's underlying decision is incorrect. We believe that the County has a limited chance of success before the Court on such claims. Although the Court

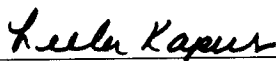
could order SDHS to comply with federal law, it is uncertain whether the County has been able, or would be able on remand, to demonstrate adequately that the factual prerequisites to cost-based reimbursement are met. Moreover, federal law has since changed, and other cost years raising the same issue were settled at the administrative level. Therefore, this is the only fiscal year which could be affected by the Court's decision, so the case would not set any useful precedent.

With respect to ancillary services, the Director's decision is not a facially unreasonable interpretation of the controlling law. Accordingly, given the deference usually shown by courts to administrative agencies, it is unlikely that the Court would require SDHS to do more than properly implement the Director's decision.

Accepting \$31.00 per administrative day to implement the Director's decision is prudent and cost effective. In the absence of an agreement to pay \$31.00 per day, SDHS would have to pull a statistically valid sample of patient files at each hospital, determine which ancillary services were provided to such patients, assign a reimbursement rate to those services, then extrapolate the total amount due from the sample. The County would have to perform a shadow audit of the same charts to assure that SHDS' figures are correct. This process would be extremely time consuming and would take substantial valuable staff resources. County personnel who are familiar with this issue believe that the \$31.00 per day figure is a fair estimate of the amount which would be received if such an audit were conducted.

Given the limited likelihood that the Court would provide greater relief than is available through the settlement, and given the savings of time and resources inherent in the settlement, our office and the County Department of Health Services recommend settling this case under the terms specified above.

APPROVED:



LEELA A. KAPUR  
Assistant County Counsel