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APPLICATION OF THE DEFINITION OF "EMERGENCY MEDICAL CONDITION" TO THE PROVISION OF LONG-TERM CARE

*Lynnette Doan Wiggins**

INTRODUCTION

Since the establishment of Medicaid in 1965, states have been forced to balance the medical needs of their residents against the limited funds and resources available to care for the poor.¹ As the number of aliens who reside in the United States steadily increases, the issue of undocumented aliens' access to health care services has become an important area of growing concern to health professionals, social services and government agencies.² Medicaid regulations provide limited funding for the medical care of aliens lawfully admitted for permanent residence in the United States. For aliens not lawfully admitted to the United States,

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¹ See, e.g., Peter L. Reich, *Public Benefits for Undocumented Aliens: State Law into the Breach Once More*, 21 N.M. L. REV. 219 (1991) (examining the states' role in providing Medicaid funding for illegal aliens); Sana Loue, *Health Care Rationing and the Undocumented Alien: An Examination of its Impact and a Proposal for Alternative Methods to Access Care*, 21 W. ST. U. L. REV. 95 (1993) (analyzing the role of the undocumented alien in health care reform).

² Sana Loue, *Access to Health Care and the Undocumented Alien*, 13 J. LEGAL MED 271, 271 (1992). (More than four million people currently live in the United States illegally). Cynthia W. Brooks, Comment, *Health Care Reform, Immigration Laws, and Federally Mandated Medical Services: Impact of Illegal Immigration*, 17 HOUS. J. INT'L L 141, 155 (1994). The economic impact of providing health care to undocumented aliens has grown particularly rapidly in California. According to the State Department of Health Services, the cost of providing services to illegal aliens was \$900 million in 1992, an increase of 1,800% over the previous 5 years. Ron Prince, *Americans Want Illegal Immigrants Out*, L.A. TIMES, Sept. 6, 1994, at 7. See also Tony Perry, *Gingrich Offers to Fully Repay States on Immigrant Care*, L.A. TIMES, Oct. 21, 1995, at 1 (estimating that in fiscal year 1995-96, California will pay \$382 million to provide emergency medical services to illegal immigrants, a significant increase from the \$21 million paid in 1988-89).

Medicaid further limits reimbursement to care that is provided for emergency medical conditions.³

This comment examines the limited circumstances under which undocumented aliens may receive government funded access to health care services through the Medicaid Program. First, it provides a brief overview of the Federal Medicaid Act and the expansion of Medicaid coverage provided by a limited number of states. Next, this article provides an analysis of several recent court decisions, including a decision by the United States District Court for the Northern District of New York holding that healthcare provided to undocumented aliens in a state rehabilitation center met the Medicaid Act's statutory definition of "emergency medical care," thereby entitling the center to reimbursement for the provided health care. Finally, the article discusses the implications of the New York court's expansive reading of the term "emergency medical care," including its impact on state and county funded medical care, health care reform, and on interpretation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

BACKGROUND

Title XIX of the Social Security Act establishes a jointly funded, cooperative, federal-state cost-sharing program known as Medicaid. Congress intended and designed the Medicaid program to enable each state to provide medical assistance to eligible individuals.⁴ Enacted in 1965, the program was established "for the purpose of providing federal financial assistance to states that choose to reimburse certain costs of medical treatment for needy persons."⁵ In return for cost-sharing by the federal government, participating states must comply with broad requirements set forth in the Medicaid Act and by the Secretary of Health and Human

³ Loue, *supra* note 2, at 288-89. 42 U.S.C. § 1396b(v) (1988 & Supp. V 1993) defines the medical assistance benefits provided to aliens not lawfully admitted for permanent residence. 42 C.F.R. § 440.255 (1994) provides the corresponding regulatory guidelines.

⁴ Loue, *supra* note 2, at 287. *See also* *Atkins v. Rivera*, 477 U.S. 154, 156-57 (1986).
⁵ *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195, 1198 (N.D.N.Y. 1995) (quoting *Schweiker v. Hogan*, 457 U.S. 569, 571 (1982)).

Services.⁶ If a state satisfies the requirements, it has wide discretion in administering its program, "including the responsibility for determining the eligibility of recipients, enlisting medical service providers, and paying those providers for services rendered."⁷

Two groups of individuals are statutorily and automatically eligible for Medicaid: the categorically needy and the medically needy.⁸ States that participate in the Medicaid program must provide coverage for the categorically needy. The categorically needy are persons eligible for assistance under either the Supplemental Security Income (SSI) program or the Aid to Families with Dependent Children (AFDC) program.⁹ The medically needy are persons who may be eligible to receive Medicaid if they meet the requirements established by the individual state in which they reside. These medically needy individuals may have resources or income to provide for some of the basic necessities of life, but not enough for the expenses required by medical care.¹⁰

When first enacted, the Medicaid statute did not address the issue of an alien's eligibility to receive services under its program.¹¹ However, subsequent statutory revisions and agency regulations have addressed the issue and currently limit full-scope Medicaid coverage¹² to aliens lawfully admitted to the United States for permanent residence or those permanently residing in the United States under the color of law

⁶ *Atkins v. Rivera*, 477 U.S. 154, 156-57 (1986).

⁷ *Greenery Rehabilitation Group*, 893 F. Supp. at 1198 (quoting *DeGregorio v. O'Bannon*, 500 F. Supp. 541, 545 (E.D. Pa. 1980)).

⁸ *Loue*, *supra* note 2, at 287 (citing the Social Security Act, tit. XIX, 42 U.S.C. §§ 1396-1396(u) (1988 & Supp. I 1989), as amended by Pub.L. No. 101-476, 104 Stat. 1142, Pub. L. No. 101-508, 104 Stat. 1388).

⁹ *Loue*, *supra* note 2, at 287-88. SSI provides cash assistance to low income persons who are aged, blind, or disabled. *Id.* at 288 n.115. AFDC provides assistance to needy families with dependent children. *Id.* at 287 n.114.

¹⁰ *Loue*, *supra* note 2, at 288.

¹¹ *Id.* (citing 42 U.S.C. §§ 1396-1396(u) (1988 & Supp. I 1989)).

¹² "Full-scope" Medicaid coverage is used here to include nonemergency and preventive medical care that is routinely provided to poor, elderly and disabled residents through the Medicaid program. *See, e.g., Reich*, *supra* note 1, at 233. These benefits are limited to citizens of the United States, lawful permanent residents, and aliens "permanently residing in the United States under color of law." *Id.* at 232 n.82.

(PRUCOL).¹³ Statutory amendments have also further broadened Medicaid to permit federal reimbursement of state expenditures incurred in the care of undocumented aliens if such care and services are "necessary for the treatment of an emergency medical condition of the alien [and] such alien otherwise meets the eligibility requirements for medical assistance under the state plan ...".¹⁴ The Medicaid Act defines "emergency medical condition" as a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (1) placing the patient's health in serious jeopardy, (2) serious impairment to bodily functions, or (3) serious dysfunction of any bodily organ or part.¹⁵

This definition of "emergency medical condition" parallels the "antidumping" provisions of the Emergency Medical Treatment and Active Labor Act (EMTALA).¹⁶ Arguably the emergency medical care provisions

¹³ 42 U.S.C. § 1396b(v)(1) (1998 & Supp. V 1993) and 42 C.F.R. § 435.406(a)(2) (1990). In 1990 HHS published its final rule that PRUCOL aliens are eligible for all Medicaid services. The PRUCOL category now includes aliens residing in the United States under a grant of voluntary departure, aliens who are the beneficiaries of approved immediate relative petitions, asylees, refugees, aliens granted stays of deportation, and applicants for adjustment of status to permanent residence. PRUCOL also includes "any other aliens living in the United States with the knowledge and permission of the Immigration and Naturalization Service (INS) whose departure that agency does not contemplate enforcing." Loue, *supra* note 2, at 288 n.122. Note that under these regulations full Medicaid coverage has not been extended to a large group of aliens legally but temporarily residing in the United States, e.g., those under student or tourist visas. Accord ILL. ADMIN. CODE tit. 89, § 120.310(b)(2) (1995) (specifically excluding persons living in the United States under a study or tourist visa, temporary workers, business visitors, and finances of U.S. citizens from full-scope Medicaid Assistance coverage).

¹⁴ 42 U.S.C. § 1396(v)(2) (1988 & Supp. V 1993). The statutory provision specifically excludes care and services related to an organ transplant procedure. 42 U.S.C. § 1396(v)(2)(C) (1988 & Supp. V 1993).

¹⁵ 42 U.S.C. § 1396(v)(3) (1988 & Supp. V 1993).

¹⁶ 42 U.S.C. § 1395dd (1988 & Supp. V 1993). EMTALA was enacted to prevent hospital transfers of unstable emergency patients for economic reasons. The statute requires that any hospital that receives Medicare payments and has an emergency department must provide an appropriate medical screening examination to every patient for whom a request is made for examination or treatment of a medical condition to determine if an emergency medical condition exists. When the screening examination determines that an emergency medical condition exists, or that the person is in active labor, the hospital must stabilize the patient's emergency medical condition or provide treatment of the patient's labor within the capabilities of the hospital. The statute defines "emergency medical condition" as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, ii) serious impairment to bodily functions, or iii) serious dysfunction of any bodily organ or part, 42 U.S.C. § 1395dd(e)(1) (1988 &

of the two statutes should work together to: (1) screen and treat undocumented aliens needing emergency medical care; and (2) reimburse hospitals through Medicaid for the costs of emergency care provided to undocumented aliens who meet the financial and residency requirements for Medicaid.¹⁷

Although the availability of medical care to undocumented aliens through state and local programs varies considerably, statutory and regulatory provisions for Medicaid reimbursement for emergency medical care closely resembles federal legislation in many states.¹⁸ Judicial interpretation of what constitutes "emergency medical care" in the context of Medicaid reimbursement is, however, significantly limited and highly dependent on the factual basis of each claim.¹⁹

CASES HOLDING LONG-TERM MEDICAL CARE WITHIN STATUTORY DEFINITION OF "EMERGENCY MEDICAL CONDITION"

The leading federal case dealing with the issue of "emergency medical care" within the statutory and regulatory definitions of the Medicaid Act, is *Greenery Rehabilitation Group, Inc. v. Hammon*.²⁰ In *Greenery*, the United States District Court for the Northern District of New York held the operator of a specialized brain injury treatment program was entitled to Medicaid reimbursement for chronic care provided to two aliens who suffered permanent traumatic brain damage.²¹ The court's decision rested on the finding that the chronic care received by the aliens was "emergency

Supp. V 1993).

¹⁷ Loue, *supra* note 2, at 289.

¹⁸ See, e.g., CAL. WELF. & INST. CODE § 14007.5(d) (West 1995); ILL. ADMIN. CODE tit. 89, § 120.310 (1995); MASS. REGS. CODE tit. 130, § 507.600 (1995) and N.Y. COMP. CODES R. & REGS. tit. 18, § 360-3.2(f) (1995). Several states, e.g. California, have extended Medicaid coverage to undocumented aliens to include "necessary pregnancy-related services." CAL. WELF. & INST. CODE § 14007.5(d) (West 1995). See also *Lewis v. Grinker*, 965 F.2d 1206, 1221 (2d Cir. 1992) (enjoining Secretary of Health and Human Services from denying Medicaid coverage for prenatal care to non-PRUCOL aliens finding that Congress did not intend to prevent otherwise eligible women from receiving such care "to benefit their future citizen children").

¹⁹ See discussion *infra* notes 20-79 and accompanying text.

²⁰ *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195 (N.D.N.Y. 1995).

²¹ *Id.* at 1207.

medical care" within the Medicaid statutory definition.²²

At the time of the facts giving rise to this litigation, the Greenery Rehabilitation Group, Inc. ("Greenery") operated facilities specializing in the long-term treatment of patients with traumatic brain injuries. Through an agreement with the New York City Human Resources Administration (HRA), Greenery provided and expected reimbursement for care given to New York City residents meeting Medicaid financial eligibility criteria.²³ In accordance with this agreement, Greenery admitted three patients into its specialized brain injury treatment program. The three patients were immigrants who resided in New York City. All three patients sustained serious brain damage from traumatic injuries and received initial care for their injuries at other New York hospitals before being transferred to Greenery for long term care.²⁴ When HRA refused to reimburse Greenery for the specialized care provided, Greenery filed suit seeking reimbursement.²⁵

The main issue raised at trial was whether the services provided to the three aliens at Greenery met the Medicaid statutory and regulatory definition of an "emergency medical condition." If so, Greenery was entitled to Medicaid reimbursement.²⁶ In reaching its decision, the court analyzed the facts regarding the condition of the three patients and the care received by each.

The first patient, I.U., treated by Greenery, suffered a severe brain injury in a 1991 car accident,²⁷ which rendered her paralyzed in all of her limbs, left her unable to speak and with difficulty swallowing and a tracheostomy to help her breath. Since the patient had difficulty swallowing, it was necessary for her to be fed through a tube inserted into

²² *Id.* at 1205-07.

²³ *Id.* at 1197.

²⁴ *Id.* at 1197-98.

²⁵ *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195, 1198 (N.D.N.Y., 1995).
²⁶ Before turning its attention to the central issue, the court determined the Greenery

received prior authorization and followed proper Medicaid procedures for the admission of the three patients. Therefore, reimbursement could not be denied on the basis that prior authorization for care had not been received. *Id.* at 1201. New York State regulations provide that aliens lawfully admitted to the United States for permanent residence or who otherwise meet PRUCOL requirements and meet Medicaid financial and residency criteria are eligible to receive the full range of Medicaid benefits. Non-PRUCOL aliens, however, are not eligible to receive medical assistance unless the care is necessary for the treatment of an "emergency medical condition." The New York statutory definition of "emergency medical condition" is substantially the same as that of the federal Medicaid Act. *Id.* at 1198. *See also* N.Y. COMP. CODES R. & REGS. tit. 18, § 360-3.2(f) (1995).

²⁷ *Greenery Rehabilitation Group*, 893 F.Supp. at 1197.

her stomach. The tube required careful monitoring to prevent infection and to ensure that she received proper nutrition.²⁸ The patient's attending physician established that the patient was unable to feed herself, was unable to get out of bed on her own or bathe independently. Testimony established that if treatment was withdrawn, the patient would die. The defendant's expert agreed that the patient required total nursing care, the absence of which would eventually, but not immediately, place her health in serious jeopardy.²⁹

The second patient, Y.K., treated at Greenery, was an immigrant legally residing in New York City, suffered brain damage in 1990 when he was beaten with a blunt instrument in Manhattan's Central Park.³⁰ Although Y.K. recovered significantly from his initial injuries, he still suffered from tardive dyskinesia³¹ and behavioral problems which caused him to physically strike staff and other patients and to become physically aggressive in response to frustration. Partially as the result of his injuries, Y.K. was also legally blind.³² In contrast to I.U., Y.K. was able to walk without assistance, feed himself, use the bathroom and groom himself but required direction to do so. Y.K. had not required continuous medical care at any time since his injury.³³ Y.K.'s treating physician testified that although he would classify the care Y.K. received as chronic rather than emergency care, without such care Y.K.'s health would be in serious jeopardy. In the treating physician's opinion, Greenery provided some emergency care to Y.K. under the regulatory definition.³⁴ The defendant's expert agreed that although the treatment Y.K. received was medically necessary, she did not believe the absence of that care would place Y.K.'s

²⁸ *Id.* at 1201-02.

²⁹ *Id.* at 1202. The cost of care provided to I.U. by the Greenery, at rates approved by the State of New York, was \$152,612.28. *Id.* at 1198.

³⁰ *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195, 1197 (N.D. N.Y. 1995).
³¹ Tardive dyskinesia is an impairment of voluntary movements, typically marked by repetitive involuntary motions of the face and mouth. Although principally affecting the elderly, it is also induced by long-term administration of antipsychotic agents and may persist after withdrawal of the agent. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 516 (28th ed. 1994).

³² *Greenery Rehabilitation Group*, 893 F. Supp. at 1202-03.

³³ *Id.* at 1203.

³⁴ *Id.*

health in "serious jeopardy" as required by the Medicaid regulation.³⁵

L.C., the final patient considered by the court in *Greenery*, was a thirty-eight-year-old immigrant who resided in New York City when he was shot in 1991.³⁶ As a result of his gunshot injury, L.C. suffered damage to the frontal lobe of his brain which affected his judgment and response to his environment. L.C. was unable to walk short distances by himself and required the assistance of a personal attendant as well as parallel bars. Confined and restrained to a wheelchair, L.C. required assistance to bathe and use the bathroom. Although able to feed himself when presented with food, he was unable to obtain his own food. The medications prescribed to treat L.C.'s behavioral problems and seizure disorder required careful monitoring and continuous medical care.³⁷ L.C.'s treating physician testified that although he classified the care L.C. received as chronic, without such care the patient's health would be placed in serious jeopardy. The physician testified that at least some of the care provided by Greenery was emergency care under the regulatory definition.³⁸ The defendant's expert agreed that L.C. was dependent on nursing assistance for grooming, eating, bathing, and moving to other locations. However, the expert nevertheless felt that the absence of such care would not place L.C.'s health in "serious jeopardy as used in the regulation to mean a life or death situation."³⁹

In analyzing the issue of whether Greenery was entitled to Medicaid reimbursement for the care provided the three aliens, the court applied the statutory and regulatory definitions of "emergency medical condition" to that care.⁴⁰ The court noted that the decision maker is given great latitude in determining whether an alien's condition is an "emergency medical

condition" entitling him to Medicaid benefits. The court also stated that

³⁵ *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195, 1203 (N.D.N.Y., 1995) The cost of Y.K.'s care at the Greenery was \$213,916.10. *Id.* at 1198.

³⁶ *Id.* at 1198.

³⁷ *Id.* at 1203.

³⁸ *Id.* at 1203-04.

³⁹ *Id.* at 1204 LC's care at the Greenery cost \$181,604.76. *Id.* at 1198.

⁴⁰ *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195, 1204-1205 (noting also that the common definition of emergency care used in the medical field is not the same as the relevant statutory definition).

expert medical judgment must guide in this determination.⁴¹

Regarding I.U., the court concluded that without the care she received at Greenery, she would have soon become malnourished and dehydrated and would have developed a variety of infections. Because these problems would certainly have "place[ed] her health in serious jeopardy and seriously impair[ed] her bodily functions," the care I.U. received at Greenery fulfilled the statutory definition of emergency medical care.⁴²

Applying the same definition and analysis to the care provided Y.K., the court reached a different conclusion. Here, the court concluded Y.K.'s ability to perform bodily functions, such as feeding and grooming himself, indicated that the absence of immediate medical attention would not have placed Y.K.'s health or bodily functions in serious jeopardy. The court found that the "immediacy requirement" was clearly missing and therefore held that an "emergency medical condition" did not exist.⁴³

Similar to I.U.'s care, the court found L.C.'s care at Greenery met the statutory and regulatory requirements of "emergency medical care."⁴⁴ L.C.'s inability to walk, feed himself, or use the bathroom without assistance led to the conclusion that without that care L.C. would have been "left without food, in his own waste, [and] unable to move," placing his health in serious jeopardy.⁴⁵ Based on these findings, the court held that Greenery had provided emergency medical care to I.U. and L.C. and

⁴¹ *Id.* at 1205. The court emphasized that in formulating the corresponding regulatory definition of "emergency medical condition," the Department of Health and Human Services (HHS) used substantially the same language as the Medicaid statute itself but with the additional requirement that the condition manifest "after sudden onset" thereby allowing broad discretion in interpretation. Citing HHS's response to comments received in response to the regulation, the court noted the agency's belief that states be allowed "to interpret and further define the services available to aliens" under the statute "supported by professional medical judgment." *Id.* (citing 55 Fed. Reg. 36813, 36816 (1990)). When giving weight to the deposition testimony provided, the court gave greater deference to that of the treating physicians than to that of the defendant's experts, opining that the treating physicians' long history of caring for the patients provided a more thorough basis for decision than did that of a state-appointed observer who "based her testimony solely on witnessing the patients for no more than one day ... and on a reading of their medical records." *Greenery Rehabilitation Group*, 893 F. Supp. at 1205.

⁴² *Greenery Rehabilitation Group*, 893 F. Supp. at 1205-06.

⁴³ *Id.* at 1206 (N.D.N.Y. 1995).

⁴⁴ *Id.*

⁴⁵ *Id.*

was therefore entitled to Medicaid reimbursement for their care.⁴⁶ In contrast, the court held the care received by Y.K. did not fall within the statutory definition of "emergency medical care," and that Greenery was not entitled to reimbursement under the Medicaid statute.⁴⁷ In reaching its conclusion, the court cited *Mercy Healthcare Ariz., Inc. v. Ariz. Health Care Cost Containment System*,⁴⁸ discussed *infra*, as a persuasive authority to support its holdings.⁴⁹

Another significant decision to examine is *Mercy Healthcare Ariz., Inc. v. Ariz. Health Care Cost Containment System*.⁵⁰ In *Mercy Healthcare Ariz., Inc.*, the Arizona Court of Appeals reversed and remanded a lower court's grant of summary judgement in favor of Arizona Health Care Cost Containment System (AHCCCS). In that case, AHCCCS denied Medicaid reimbursement to Mercy Healthcare Arizona (Mercy) for the long-term skilled nursing care of F.L., an undocumented alien.⁵¹ Similar to I.U. in *Greenery Rehabilitation Group, Inc.*, F.L. suffered serious injuries, including permanent brain damage, which left him non-verbal and paralyzed in his lower extremities. F.L. required a tracheostomy tube for breathing and a gastrointestinal tube for feeding.⁵² A physician affidavit submitted by the plaintiff stated that failure to keep F.L. in the hospital or transfer him to a skilled nursing facility would have placed F.L.'s health in serious jeopardy, would likely have caused his condition to deteriorate rapidly, and would have required "readmission to the hospital within days, if not sooner."⁵³

The principle issue on appeal was whether the trial court correctly interpreted the term "emergency medical condition" as statutorily defined in Arizona.⁵⁴ In its argument before the court, Mercy contended that if an undocumented alien suffers from an emergency medical condition, AHCCCS must cover that patient's treatment as long as the emergency

⁴⁶ *Id.* at 1206-07.

⁴⁷ *Id.*

⁴⁸ *Mercy Healthcare Ariz. v. Ariz. Health Care Cost Containment Sys.*, 887 P.2d 625 (Ariz. Ct. App. 1994)

⁴⁹ *Greenery Rehabilitation Group*, 893 F. Supp. at 1206.

⁵⁰ *Mercy Healthcare Ariz.*, 887 P.2d at 625.

⁵¹ *Id.* at 630.

⁵² *Id.* at 627.

⁵³ *Id.* at 629.

⁵⁴ *Id.* at 627. Arizona recognizes an "emergency medical condition" as that defined in section 1903(v) of the Social Security Act. ARIZ. REV. STAT. ANN. § 36-2905.05 (1993).

medical condition requires uninterrupted care.⁵⁵ In contrast, AHCCCS argued that an emergency medical condition exists only when the patient suffers acute symptoms which require immediate medical attention to avoid further harm to the patient's health or body. AHCCCS maintained that its financial responsibility for care ended when the emergency medical condition stabilized.⁵⁶

The Court of Appeals of Arizona rejected both parties' "extreme interpretations" of emergency medical condition and relied instead on the plain language of the Arizona statute.⁵⁷ Noting that the Arizona legislature had adopted the federal Medicaid statute's definition of an "emergency medical condition," the court held "the statute does not limit coverage to services for treatment while acute symptoms continue."⁵⁸ Rather, the statute mandates that AHCCCS cover services for treatment of a medical condition as long as the absence of immediate treatment, "could reasonably be expected to result in one of the three consequences defined by statute."⁵⁹

A similar issue is presented in *Crespin v. Kizer*.⁶⁰ In *Crespin*, the California Court of Appeals enjoined the State Department of Health Services (Department) from denying Medi-Cal coverage for medically necessary long-term care or renal dialysis services for non-PRUCOL aliens.⁶¹ Although the central issue of the case was whether a 1988 revision of the Medi-Cal statute implicitly authorized state Medi-Cal reimbursement for such services,⁶² rather than whether such services

⁵⁵ *Mercy Healthcare Ariz. v Ariz. Health Care Cost Containment Sys.*, 887 P.2d 625, 628 (Ariz. Ct. App. 1994).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 628-29.

⁵⁹ *Id.* at 629.

⁶⁰ *Crespin v. Kizer*, 276 Cal. Rptr. 571 (Cal. Ct. App. 1990), *as modified on denial of reh'g* (1991).

⁶¹ *Id.* at 583.

⁶² *Crespin* arose in response to a 1988 statutory amendment to the Medi-Cal Act (CAL. WELF. & INST. CODE, §§ 14000 et seq.) which expanded state funded Medi-Cal coverage to nonemergency pregnancy-related care and addressed how the state would handle coverage for aliens needing long-term care or renal dialysis. At issue in *Crespin* was whether the phrase which extended coverage for long-term care and renal dialysis to non-PRUCOL aliens "who are receiving" these services applied only to non-PRUCOL aliens receiving services on the date the amendment was enacted or to all aliens receiving long-term care and renal dialysis benefits at the time the statute was

qualified as "emergency medical care," the court noted in dicta that in most cases renal dialysis does constitute "emergency" treatment for which federal financial assistance would be available.⁶³ In analyzing the issues, the court specifically cited expert testimony which demonstrated that denying necessary long term care to unqualified aliens who required dialysis would lead to the "deterioration of their chronic conditions, and that [patients] would be increasingly subject to sudden and life-threatening medical crisis[e]s such as congestive heart failure or serious infection."⁶⁴ The court opined that even during a time of fiscal restraint, providing such care to undocumented aliens is a fiscally prudent and wise policy. To deny such care would force the "inevitable deterioration of these medical conditions into unnecessary emergency conditions requiring extremely expensive care."⁶⁵

Finally in *Gaddam v. Rowe*,⁶⁶ the Superior Court of Connecticut extended the dicta of *Crespin* and specifically held that outpatient renal dialysis was "emergency medical care" within the statutory meaning of the Medicaid Act.⁶⁷ At issue was the State Department of Social Services' refusal to pay for continued outpatient dialysis following plaintiff Gaddam's initial hospitalization for renal failure.⁶⁸ In ordering Medicaid payment for Mr. Gaddam's treatment, the court noted that the Medicaid statute does not call for "medical Russian Roulette, ... *i.e.* stop payment, wait a short

applied. *Id.* at 576-77. Effective Sept. 15, 1992, the relevant provisions of the California statute were amended to apply to aliens who were receiving long-term care or renal dialysis on the day prior to the effective date of the 1988 amendments, specifically excluding continuation of care to any person whose long term care or renal dialysis ended after the effective date of the amendment. CAL. WELF. & INST. CODE § 14007.5(k) (West 1992).

⁶³ *Crespin*, 276 Cal. Rptr. at 577 (noting that the State Department of Health Services' had acknowledged in most cases that renal dialysis constitutes "emergency" treatment). The definition of "emergency medical condition" in the California statute is substantially the same as that of federal law. Cal. Welf. & Inst. Code § 14007.5(d) (West 1992).

⁶⁴ *Crespin*, 276 Cal. Rptr. at 575.

⁶⁵ *Crespin v. Kizer*, 276 Cal. Rptr. 571, 582 n.18 (Cal. Ct. App. 1990).

⁶⁶ *Gaddam v. Rowe*, No. CV 94 035 65 13, 1995 WL 631983, *1 (Conn. Super. Ct. Oct. 13, 1995).

⁶⁷ *Id.* at *1.*3.

⁶⁸ Ashok Gaddam, a student from India residing in Connecticut under a student visa, had developed acute symptoms of kidney failure requiring renal dialysis. Although the State Department of Social Services had paid the entire costs of Mr. Gaddam's initial hospitalization and dialysis, it refused to pay for outpatient dialysis arguing that Mr. Gaddam's medical condition was no longer an emergency because Mr. Gaddam was no longer suffering from the acute symptoms of renal failure. Testimony on behalf of the plaintiff provided that if Mr. Gaddam were to stop dialysis the acute symptoms would quickly reappear and Mr. Gaddam would die within one to two weeks. *Id.* at *1.

time for symptoms to recur then hope you are in time to get the plaintiff to the hospital to restart the treatment before he dies."⁶⁹

CASES HOLDING LONG-TERM MEDICAL CARE
NOT WITHIN STATUTORY DEFINITION OF
"EMERGENCY MEDICAL CONDITION"

In *Dominguez v. Superior Court*,⁷⁰ the California Court of Appeals held that a bone marrow transplant for an undocumented alien suffering from leukemia did not fall within the state's statutory definition of necessary emergency medical treatment.⁷¹ The plaintiff's treating physician testified that without such treatment, the cancer cells would multiply and result in plaintiff's death within two to three years.⁷² Although the court acknowledged that plaintiff's argument appealed to basic humanitarian concerns, the court determined the procedure fell short of being necessary for the treatment of an "emergency medical condition" as required by statute. The court relied on the state's argument that a leukemia patient must be in remission to receive a bone marrow transplant and held such a transplant can never be an "emergency procedure" within the statutory definition because the transplant can only be performed on a stable patient with no acute symptoms.⁷³

Similarly in *Norwood Hosp. v. Comm'r of Pub. Welfare*,⁷⁴ the Supreme Judicial Court of Massachusetts upheld a lower court's decision which denied Medicaid reimbursement to plaintiff Norwood Hospital for the care it rendered to an undocumented alien whose chronic alcoholism

⁶⁹ *Crespin*, 276 Cal. Rptr. at *2-*3 (citing the reasoning of *Crespin*, *Greenery Rehabilitation Group*, and *Mercy Healthcare Ariz.*, noted *supra*).

⁷⁰ *Dominguez v. Superior Court*, 276 Cal. Rptr. 564 (Cal. Ct. App. 1990).

⁷¹ *Id.* at 568.

⁷² *Id.* at 567-68.

⁷³ *Id.* at 568. Although the court failed to find a bone marrow transplant "emergency medical care" thereby entitling plaintiff to Medi-Cal payment, the service was covered under a 1988 state statutory amendment. This amendment included within covered services care which was a "continuation of medically necessary inpatient hospital services and follow-up care ... which [was] directly related to the emergency." *Id.* at 568-71 (referring to CAL. WELF. & INST. § 14007.5(d)(3) (West 1988)). The Medi-Cal statute was subsequently amended to delete this provision. See Cal. Welf. & Inst. § 14007.5(d)(3) (West 1992).

⁷⁴ *Norwood Hosp. v. Comm'r Pub. Welfare*, 627 N.E.2d 914 (Mass. 1994).

resulted in such severe renal and hepatic failure that it caused her death within seven weeks of hospitalization.⁷⁵ Although the defendant and court agreed the patient was seriously ill when she sought and received treatment from Norwood Hospital, the court held the patient's condition did not meet the statutory and regulatory definition of "emergency medical condition."⁷⁶ The court gave great weight to the State Department's interpretation of its own rule and found the patient had not possessed an "emergency medical condition" because her chronic alcoholism had so "compromised her liver and ... central nervous system ... before she appeared at [the hospital] ... that the lack of immediate medical attention would not have resulted in more serious jeopardy to her health."⁷⁷ Accepting the Department's policy position, the court opined that if the patient's condition entitled her to Medicaid coverage, then any undocumented alien with a serious medical condition would be deemed eligible for medical assistance whether or not the absence of immediate medical attention could reasonably be expected to place that alien's health in "serious jeopardy."⁷⁸

CONCLUSION AND IMPACT

The recent expansive interpretation of "emergency medical condition" given by the courts to long-term care as it relates to eligibility for state and federal Medicaid benefits may have broad reaching effects on health services funding and the provisions of the Emergency Medical Treatment and Active Labor Act (EMTALA). Currently state and county hospitals and other health care providers bear the burden to fund the majority of uncompensated medical care in the United States, including care for undocumented aliens.⁷⁹ States such as California, New York, Texas, Illinois and Florida, where the vast majority of illegal aliens reside, must

⁷⁵ *Id.* at 915-16.

⁷⁶ *Id.* at 917. The definition of "emergency medical condition" as defined by MASS. REGS. CODE tit. 130, § 507.600 (1995) is substantially identical to that of 42 U.S.C. § 1396b(v) (1998 & Supp. V 1993).

⁷⁷ *Norwood Hosp.*, 627 N.E.2d at 917. The department's determination that the patient did not possess an "emergency medical condition" was based on physician testimony asserting he had been chronically sick for a long time and the outcome would have been the same whether he was admitted to the hospital that day or a week later. *Id.* at 917 n.5.

⁷⁸ *Id.* at 916-17.

⁷⁹ See Loue, *supra* note 2, at 296-97 (discussing the availability of medical care to undocumented aliens through state and local programs).

carry the entire social and economic burden for this care unless the federal government contributes to its cost.⁸⁰ Expansion of Medicaid coverage and federal cost-sharing to include care for conditions not traditionally considered "emergencies"⁸¹ will shift the financial burden of uncompensated care, at least in part, to the federal government. From a policy perspective, this cost shifting transfers a portion of the financial burden of illegal aliens to the government sector which possesses exclusive control over immigration policies.⁸²

The EMTALA definition of "emergency medical condition"⁸³ is substantially identical to that provided in the federal Medicaid Act and corresponding regulations.⁸⁴ This similarity ensures that undocumented aliens will receive emergency medical care within the meaning of EMTALA and hospital reimbursement for that care.⁸⁵

Arguably, the broad judicial interpretation of the term "emergency medical condition" under the Medicaid Act may ultimately broaden the medical conditions which fall under EMTALA. Traditionally, the term "emergency medical condition" under EMTALA denotes the provision of emergency medical care and the concept of imminent danger of death or serious disability,⁸⁶ rather than medical deterioration occurring over the course of time. Further, EMTALA requires a hospital to provide treatment "within the staff and facilities available at the hospital" to stabilize a patients emergency medical condition.⁸⁷ Therefore, such an expansive interpretation of "emergency medical condition" could extend

⁸⁰ Brooks, *supra* note 2, at 166-67.

⁸¹ As the court noted in *Greenery Rehabilitation Group*, the common definition of emergency care used in the medical field is not the same as the definition of emergency care established in the Medicaid statute. *Greenery Rehabilitation Group v. Hammon*, 893 F. Supp. 1195, 1205 (N.D.N.Y. 1995). In the medical context, emergency is defined as an "unlooked for or sudden occasion; an accident; an urgent or pressing need." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 544 (28th ed. 1994).

⁸² Brooks, *supra* note 2, at 141-42 (also reviewing various Immigration and Nationality Act amendments aimed at stemming the influx of illegal aliens).

⁸³ 42 U.S.C. § 1395dd (1988 & Supp. V 1993). For a discussion of EMTALA *see* note 16, *supra*.

⁸⁴ 42 U.S.C. § 1396b(v)(3) (1988 & Supp. V 1993) and 42 C.F.R. § 440.255(c)(1) (1994).

⁸⁵ Notably absent from EMTALA is a provision providing funding for the care hospitals provide in accordance with the Act. *See* 42 U.S.C. 1395dd (1988 & Supp. V 1993).

⁸⁶ *See, e.g.*, *Thornton v. Southwest Detroit Hosp.*, 895 F.2d 1131, 1134 (6th Cir. 1990).

⁸⁷ 42 U.S.C. § 1395dd(b) (1988 & Supp. V 1993).

EMTALA's coverage to hospitalized patient's who have recovered from an initial acute condition but continue to require long-term intensive rehabilitative care. Such a reading would place the transfer of these patients to a long term care facility within the reach of EMTALA. However, EMTALA only requires that patients be stabilized prior to transfer from a hospital, and the term "stabilized" means, with respect to an emergency medical condition, that "no material deterioration of the condition is likely to result from or occur during transfer of the individual from a facility."⁸⁸ Thus, it is unlikely that the number of transfers deemed to be violations of the Act will substantially increase.⁸⁹

In summary, recent court decisions have broadly interpreted the definition of "emergency medical condition" in the Medicaid Act to include chronic conditions that require intensive long-term rehabilitative care. One effect of this expansive interpretation will be an increase in federal cost-sharing for the medical care of undocumented aliens. The interpretation's effect on other statutes such as EMTALA, containing substantially similar definitions of "emergency medical condition," is less clear.

⁸⁸ 42 U.S.C. § 1395dd(e)(3) (1988 & Supp. V 1993).

⁸⁹ See, e.g., *Thorton*, 895 F.2d at 1134-35 (finding hospital that released stroke victim when her emergency medical condition had stabilized did not violate EMTALA).