Oz: CMS Will Appeal Work Req Medically Frail Suit, Case Could Go To SCOTUS

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CMS will appeal last week's decision by a district court that bars HHS from requiring plaintiff states demand Medicaid beneficiaries prove their condition significantly impairs their ability to work before they can be exempted from work requirements, CMS Administrator Mehmet Oz said Tuesday (Nov. 3) on CNBC, calling it a fundamentally important question that could go all the way to the Supreme Court.

Last week, United States District Court of Massachusetts Judge Richard Stearns agreed with the 25 plaintiff states and Washington, D.C. in *Commonwealth of Massachusetts, et al. v Mehmet Oz* (1:26-cv-12962) that the process to claim the medically frail exemption from Medicaid work requirements in CMS' June interim final rule (IFR) goes beyond the statute in violation of the Administrative Procedure Act.

"It's gonna get appealed [at the] appellate court, and that's the kind of case that might actually go to the Supreme Court because it's a fundamentally important question," Oz said. "If you try to define medical frailty -- which, again, this matters because we need to figure out who should be eligible to get Medicaid and who's able-bodied and should go to work and try to either work 20 hours a week or participate in volunteer activities or go get educated, you know, have agency over your future, go change the world, which is why you're put on the planet in the first place -- that's the key dividing point."

"So the statute says you have to define the different criteria that would allow you to be exempt from the work requirement," Oz added. "There was an effort to try to define that in a way that states could actually operationalize it. The judge didn't like that."

Oz's remarks included defending the definition of medically frail included in the IFR.

"Let's say you had a skin cancer three years ago," Oz said. "Well, does that mean you can't work today? Maybe you can't because that skin cancer metastasized and you're

struggling and you should not have to work because that's the whole point of Medicaid -- it's a payer of last resort. I love the program; I've worked in it my whole life. If you are struggling, we need to provide that service to you."

"But what if you had skin cancer three years ago, and you're fully better now? Are you still medically exempt?" Oz asked.

CNBC anchor Becky Quick highlighted that the judge ruled in the government's favor on the one-year lookback period so she feels his example doesn't address concerns from stakeholders that "medically frail" beneficiaries won't be exempted like Congress wanted them to be.

But Quick reiterated providers are concerned that they are "not really in a position to decide whether people are too medically frail to work or not -- maybe you have an issue that flares up every other month or something along those lines -- and I think that's where there is some concern among the physician community, just in terms of being able to say, 'Are we going to have this ready by January and what happens to the people who get pushed off of the list come January?'"

Oz said this issue is why CMS is allowing one year of self attestation, "giving a year of sort of a mulligan, where you just get to attest as a patient [that] 'I'm too frail to work. I can't participate.'"

"The reason we wanted that was to address these concerns 'cause I want to make sure that if you have a legitimate reason not to work 'cause you're sick, you have a chance and we'll get a lot of data over the next year to figure out exactly how to adjudicate those decision," Oz said.

He went on to attack New York, which he says will use the medically frail exemption as a loophole to keep people enrolled who are not eligible. Oz also rehashed CMS' Medicaid fraud crackdown in Minnesota. -- *Sigi Ris* (sris@iwpnews.com)