

## JUDGE ORDERS STATE TO UPDATE HUMAN SERVICE PROVIDER RATES

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STATE HOUSE NEWS SERVICE

STATE HOUSE, BOSTON, JAN. 13, 2015...The new Baker administration has been ordered by a Superior Court judge to fully implement within the next 90 days a 2008 law aimed at updating rates paid to human service providers after a coalition sued Gov. Deval Patrick's team over the summer for missing the law's deadline.

Superior Court Judge Mitchell Kaplan ruled in favor of the plaintiffs on Tuesday, finding that the Patrick administration, by its own admission, failed to fully implement Chapter 257 by the Jan. 1, 2014 deadline imposed by the law.

In his ruling, Kaplan rejected the previous administration's contention that implementation of the law was implicitly subject to adequate financial resources provided by the Legislature. Kaplan said Chapter 257 does not direct payment or bind the Legislature to make an appropriation, but rather specifies how new rates shall be set.

"The decision of how much to pay for certain services is a political one," Kaplan wrote in his eight-page ruling. "It may be that the Legislature determines that quality providers can exist only if they receive certain minimum payments for services, even if that means fewer services can be purchased."

Kaplan ordered that Secretary of Health and Human Services Marylou Sudders establish rates of payment for all social service programs covered by the law within 90 days to be in effect for services purchased by the state starting July 1, 2015.

"Most importantly it means the Commonwealth has to obey the law, so I think it's validation for us that the struggles over the past eight years with the previous administration weren't for naught. The Commonwealth has an obligation to set fair and adequate reimbursement rates in a transparent manner," said Vic DiGravio, president of the Association for Behavioral Healthcare.

Gov. Charlie Baker is in full support of Chapter 257, though his administration will face a challenge in trying to fully implement it over the next three months as it gets its feet underneath it and focuses on solving for a budget gap and building a new budget for fiscal 2016.

During his campaign at a forum in Faneuil Hall, Baker said, "I feel like 257 is the train that never gets to the station. I can promise you as governor it will be funded."

A spokeswoman for Baker did not immediately respond to a request for comment.

The 2008 law was an attempt by the Legislature and Patrick to implement the first statewide adjustment to human service provider rates since 1987. The law, at the request of the administration, gave the Executive Office of Health and Human Services four years to phase in the new rates in connection with an estimated \$2.2 billion in contracted services.

In 2012, the Patrick administration went back to the providers and asked for an additional two years to complete the process, which the provider groups agreed to and the Legislature amended the law to reflect the new timeline.

The coalition behind the lawsuit included the Massachusetts Council of Human Service Providers, the Association for Behavioral Healthcare, the Association of Developmental Disabilities Providers, Massachusetts Early Intervention Consortium and the Children's League of Massachusetts.

Their lawsuit filed on June 30 contended that the Patrick administration had set new rates for just 68 percent of the contracted services and had failed to begin paying \$52.1 million of the rates set at the beginning of the year.

The administration contested those figures, but did not dispute that the process was incomplete.

Former Health and Human Services Secretary John Polanowicz and former Administration and Finance Secretary Glen Shor tried to avoid the lawsuit by pledging to have 90 percent of the rates set before they left office. In a memo to the provider groups, the secretaries described the deadlines as "more aspirational than attainable."

DiGravio said he believes it's important for the Baker administration to adhere to the judge's order, but acknowledged that the 90-day window would be tight.

"Unfortunately, the new administration has had a mess not of their creation placed in their lap and it's going to take a lot of work. That's why we're really committed to working with them," DiGravio said.

Judge Kaplan rejected the coalition's request to compel the administration to retroactively set rates back to January and pay for services delivered since July 1 at the new rates, but said individual providers could pursue that money in court if they choose.

"I think what we're more interested at this point is working with the new governor and new secretary and making sure the law is implemented prospectively," DiGravio said.

DiGravio said it too difficult to know how much the ruling would cost the state without knowing the level of the rates that must still be set, and said that while the Patrick administration did set additional rates between July and December he did not know if they reached 90 percent as promised.

"They did set more, but we still have major categories of service that have not had a rates set," he said.

The Patrick administration claimed that as of late July \$1.68 billion, or over 75 percent of the \$2.2 billion in purchased services covered by Chapter 257, had been brought under new rates. The fiscal 2015 budget dedicated \$203 million to Chapter 257, including \$153 million for rate increases, about \$10 million less than requested by Patrick.

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