



The goal of our monthly newsletter is to keep you abreast of changes in the legislature affecting your industry as well as important court decisions. Should you have any questions regarding any of this information, please feel free to contact us via phone or email.

## PA Supreme Court Side-Steps Whether \$100 Million Transfer From MCARE Fund Was Constitutional

On September 27, 2013, the Supreme Court of Pennsylvania punted on the question as to whether the one-time transfer of \$100 million from the M-CARE Fund to Pennsylvania's general fund was constitutional.

By way of history, due to a revenue shortfall in 2009, the governor approved a supplemental appropriation bill on October 9, 2009, directing \$100 million to be transferred from the M-CARE Fund to the general fund. On October 13, 2009, the health care industry filed petitions against the state requesting the Court to declare the transfer an illegal taking in violation of due process.

On April 15, 2010, the Commonwealth Court held that the transfer was unlawful, and the state appealed. The state argued that the Fund is a special fund subject to budgetary control and reallocation to other uses. The state also argued that during the pre-budget crisis, the Fund received more than \$100 million from cigarette taxes and motor vehicle violation surcharges to fund abatements to provider assessments. As such, the state argued that at least \$100 million from the Fund was subject to reallocation.

Appellees responded that because payment of Fund assessments is mandatory to be licensed in Pennsylvania, appellees have a vested interest of monies in the Fund regardless if the Fund contains monies from non-provider sources. Appellees also argued that the transferred monies depleted the balance in the Fund that otherwise would have been used to pay future claims and/or to reduce future assessments imposed on providers.

The PA Supreme Court determined that the monies transferred had nothing to do with the M-CARE statute or its purpose and acknowledged that providers were led to believe that they could rely on the monies in the Fund to be used for purposes rationally related to their practice of rendering health care. The Court further agreed that health care providers had a vested interest in the Fund and were entitled pursuant to due process to have the monies in the Fund used in the manner directed by the M-CARE statute. Despite this, the Court stated that the state legislature had the authority to use "surplus" monies contained in funds to meet budgetary needs. The Court held that there was insufficient evidence on whether the money transferred from the Fund constituted a "surplus," which was pivotal to its determination of whether the transfer was constitutional. As such, the Court withheld its ruling pointing to an insufficient factual record on the issue of whether the monies were a surplus.

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