IN THE SUPREME COURT OF OHIO

STATE OF OHIO *EX REL.* LEADINGAGE OHIO, *et al.,*	)	CASE NO. 2024-0238
Plaintiffs/Relators,	)	
v.	)	
THE OHIO DEPARTMENT OF MEDICAID, *et al.,*	)	
Defendants/Respondents.	)	

RELATORS' RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR DISCOVERY AND SCHEDULING ORDER

Respondents' "Motion for Discovery and Scheduling Order" must be called out for what it is: a bad-faith attempt to delay the resolution of this case for an entire year (conveniently, until the end of the fiscal biennium) and to avoid offering the Court any defense of Respondents' groundless interpretation of Ohio law. Relators have detailed why Respondents' position contradicts the plain text of the statute, and Respondents have entirely failed to respond to those legal arguments. Instead, Respondents assert that they need unspecified fact discovery *from Relators* in order to articulate *their own* legal position—a legal position that they have already formulated, have previously articulated in response to Relators' rate reconsideration request, and have been implementing for nine months. Every day that Respondents continue to violate Ohio law is a day that Respondents deny Ohio nursing home residents the benefit of the quality incentives the General Assembly specifically required Respondents to provide. The Court should not countenance Respondents' ploy for further delay. Because Respondents have forfeited their chance

to respond to Relators' arguments on the merits, the Court should summarily grant Relators' request for mandamus and thereby require Respondents to apply Ohio law as written.

A. This Case Presents a Purely Legal Question of Statutory Interpretation.

Respondents attempt to create a false sense of complexity by spending a significant portion of their Motion discussing Medicaid payment types that have nothing to do with this case. Despite Respondents' generic statement that Medicaid is an "enormously complicated program," the question before the Court is quite narrow and quite simple:

Does "rate" mean "rate," or does "rate" mean "price"?

The parties' sole disagreement is over the interpretation of one phrase in Revised Code Section 5165.26(E)(1)(a), regarding the calculation of quality incentive payments. Specifically, the disagreement is whether the term "rate for direct care costs" in that subsection actually means "rate for direct care costs" (as Relators contend), or whether it instead means "cost per case-mix unit" (also known as the "price," as Respondents contend in their rate reconsideration response).

The answer is as simple as the question. This Court has consistently held: "It is a cardinal rule of statutory construction that where the terms of a statute are clear and unambiguous, the statute should be applied without interpretation." *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶ 11. "When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said, and give effect only to the words the legislature used, making neither additions to, nor deletions from, the statutory language." *Id.* (internal citations omitted).

Here, Respondents have not even *alleged* that the statutory language is ambiguous—and indeed, it is not. "Rate for direct care costs" is a statutorily defined term: it is the product of a nursing facility's "case-mix score" multiplied by its peer group's "cost per case-mix unit." *See*

R.C. 5165.19(A). The express language of Section 5165.26(E)(1)(a) requires Respondents to take sixty per cent of the change in a nursing facility's "rate for direct care costs" as a result of rebasing—not sixty percent of the change in the "cost per case-mix unit" (*i.e.*, "price") as a result of rebasing. There is no legal basis to conclude that the General Assembly did not mean what it wrote. The statutory language could not be clearer, and therefore it *must* be applied as written.

B. Discovery Is Neither Necessary nor Appropriate.

Because the sole question in this case is one of law for which fact discovery (especially fact discovery from the Relator trade associations) is entirely unnecessary and irrelevant, it is unsurprising that Respondents are unable to identify what, exactly, they need to obtain through discovery. Indeed, there is nothing Respondents could possibly obtain from Relators in discovery that would be relevant to the legal question before the Court.

Equally inappropriate is Respondents' contention that they need to acquire expert testimony in order to present their case. Ohio law is well-settled that "[an] expert witness is not permitted to give an opinion relating to the law." *Witzmann v. Adam*, 2d Dist. Montgomery No. 23352, 2011-Ohio-379, ¶ 62, citing *Kraynak v. Youngstown City School Dist. Bd. of Ed'n*, 118 Ohio St.3d 400, 2008-Ohio-2618, ¶ 21 (saying that a trial court abuses its discretion when it allows an expert witness to interpret for the jury what a statute requires). As Ohio courts have explained, "[e]xpert testimony regarding matters of law is not appropriate because the court may not abdicate its role as finder of law." *Dickerson v. Kirk*, 12th Dist. Butler Case No. CA98-09-186, 1999 Ohio App. LEXIS 78, at *7-8 (Jan. 19, 1999), citing *Sikorski v. Link Elec. & Safety Control Co.*, 117 Ohio App. 3d 822, 831 (8th Dist., Jan. 16, 1997).

Again, the issue in this case is purely an issue of law, and therefore expert testimony on that issue would be improper and inadmissible. Moreover, ODM is the state agency charged with

implementing the Medicaid statute in question, and it is currently implementing that statute according to its own (erroneous) interpretation. There is no reason to delay resolution of this case to allow ODM to hire an outside "expert" to opine on the validity of ODM's interpretation. It is ODM's job to defend its position in Court; it has made no attempt to do so.

CONCLUSION

Given that Respondents have forfeited their opportunity to respond substantively to Relators' mandamus petition and to offer any legal argument in support of their position, Relators no longer believe there is a need for oral argument in this case. Respondents have not alleged that the statute in question is in any way ambiguous, thus waiving any such contention at oral argument. Even in their Answer, Respondents avoid addressing any questions of law whatsoever by responding formulaically that various paragraphs "contain[] no factual allegations requiring a response by ODM."

Accordingly, Relators respectfully request that this Court issue a peremptory writ of mandamus ordering Respondents to calculate and pay provider incentive reimbursement rates, dating from July 1, 2023 forward, as required pursuant to the plain, unambiguous language of Revised Code section 5165.26 as amended by the Budget Legislation. In particular, the Court should require Respondents to use the "rate for direct care costs," rather than the "price," in performing the calculation under division (E)(1)(a) of section 5165.26 for the July 1, 2023 rate-setting and any subsequent rate-setting, as required by the plain and unambiguous language of that division.

Respectfully submitted,

BARNES & THORNBURG LLP

/s David Paragas
David Paragas (0043908)
41 S. High Street, Suite 3300
Columbus, Ohio 43215
Phone: (614) 628-1407
David.Paragas@btlaw.com

Kian Hudson (*pro hac vice*)
11 South Meridian Street
Indianapolis, Indiana 46204
Phone: (317) 229-3111
Kian.Hudson@btlaw.com

ROLF GOFFMAN MARTIN LANG LLP

/s Aric D. Martin
Aric D. Martin (0065765)
Joseph F. Petros III (0088363)
31105 Bainbridge Road, Suite 4
Cleveland, Ohio 44139
Phone: (216) 514-1100
Fax: (216) 626-7623
Martin@RolfLaw.com
Petros@RolfLaw.com

Attorneys for Relators

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of April, 2024, a true and accurate copy of the foregoing was electronically filed with the Court and served on parties of record listed below via electronic mail:

Frank J. Reed
Frost Brown Todd LLP
One Columbus, Suite 2300
10 West Broad Street
Columbus, OH 43215
freed@fbtlaw.com

Ryan W. Goellner
Nathaniel L. Truitt
Frost Brown Todd LLP
3300 Great American Tower
301 East Fourth Street, Suite 3300
Cincinnati, OH 45202
rgoellner@fbtlaw.com
ntruitt@fbtlaw.com

Counsel for Respondents Ohio Department Of Medicaid and Maureen M. Corcoran, Director

/s David Paragas
David Paragas