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Virginia Accuses Tribe Of Medicaid Billing Fraud

By **Crystal Owens**

Law360 (May 2, 2025, 2:48 PM EDT) -- Virginia is fighting a bid by the Nansemond Indian Tribe for an order that would require it to continue processing the tribe's unpaid Medicaid reimbursement claims, telling a federal court that it instead suspended payments and its Medicaid fraud unit is investigating the tribal healthcare entity.

In two years Fishing Point Healthcare billed taxpayers hundreds of millions to serve roughly 2,000 Medicaid patients. The costs appear to stem from the use of subcontracted providers to perform personal care and home health services such as bathing, dressing and toileting, as well as physical or speech therapy at the federal all-inclusive rate of \$801, the commonwealth said.

Bills for this group of roughly 2,000 members surpass those of Virginia hospitals serving 10 times more people, it told the court.

Most of the non-clinic services the tribe billed for were provided without a physician's authorization or oversight, according to its Tuesday **response**.

And although the federal all-inclusive rate is meant to cover one outpatient visit, the tribal healthcare entity appears to have billed for multiple services within one visit – and sometimes over the five-visit limit in one day, Virginia told the court.

Fishing Point also racked up millions more in bills by charging the all-inclusive rate to provide over-the-counter medications, meaning it repeatedly billed taxpayers \$801 for an \$11 bottle of ibuprofen, it alleged.

In 11 months, the healthcare entity billed taxpayers roughly \$3,066,535 for such medications, Virginia claimed.

"In short, there appears to be potential fraud or abuse happening at Fishing Point. Virginia's Department of Medical Assistance Services has thus referred Fishing Point to the Medicaid Fraud Control Unit and, as federal law requires, suspended all payments to Fishing Point while the credible allegation of fraud is investigated," the commonwealth said.

The federally recognized tribe and its healthcare entity **sued** the commonwealth, Gov. Glenn Youngkin, its Department of Medical Assistance Services, its Office of the Secretary of Health and Human Services and various state officials on April 1, saying the state made changes to its Medicaid program without lawful authority in a "systematic" campaign to undermine its sovereign rights.

Under federal law, Medicaid policy changes that affect tribal health programs must go through formal tribal consultation and also win approval from the federal Centers for Medicare & Medicaid Services, the tribe argues.

But Virginia chose to bypass both steps, according to the suit, which contends that the state's actions thus violated the Medicaid Act, the Indian Self-Determination and Education Assistance Act, the Indian Health Care Improvement Act and the U.S. Constitution's supremacy clause. The clause establishes that federal law is "the supreme Law of the Land," making any conflicting state law null and void, according to the lawsuit.

In 2024 and 2025, Virginia made sweeping Medicaid policy changes that materially harmed Fishing Point's operations by illegally interfering in its business, the tribe alleges.

Specifically, the state unlawfully withheld more than 130,000 reimbursements at the federal all-inclusive rate, which obstructed Fishing Point's enrollment as a Medicaid provider and tried to limit tribal reimbursement eligibility without conducting mandatory tribal consultation or getting the required federal approval, the suit says.

Fishing Point operates under a Title I Contract with the Indian Health Service under the ISDEAA, providing healthcare not only to its own tribal citizens, but also to other American Indian and Alaska Native plus "non-AI/AN" Medicaid beneficiaries, according to the suit.

According to the tribe's April 10 request **for a preliminary injunction**, a federal audit on the appropriateness of Fishing Point's billing and Virginia's refusal to reimburse found that the healthcare entity's practices were in full compliance with federal law and that the commonwealth had been underpaying on the Medicaid claims it did process.

Virginia counted those arguments on Tuesday, saying Fishing Point's motion for a preliminary injunction is unjustifiably delayed, lacks any basis in law or fact and "is inappropriately clothed in invective and inflammatory accusation."

"This action is not about tribal sovereignty. It is about Virginia's authority to manage its Medicaid program and eradicate fraud and abuse in the same," it argued.

According to the response, Fishing Point's healthcare clinic in Portsmouth billed about \$2,675,514 in 2023 for personal care services that were provided in a home or other location when it first opened its doors.

In 2024, the healthcare entity's billings for these services suddenly surged, Virginia said, totaling \$96,167,628, a 3,594% increase over the previous year.

The total reflects services provided to 520 of the 1,267 members Fishing Point billed the state's Department of Medical Assistance Services for that year, it told the court, meaning 41.04% of the Medicaid members that the healthcare clinic served had received personal care services, when just 2.3% of the overall Medicaid population did so in 2024.

Billings for home health services, such as skilled nursing and speech, occupational and physical therapies ballooned as well, Virginia alleged, from \$164,808 for July 2023 to \$820,379 in July 2024.

And 75.61% of the members Fishing Point billed for were receiving these services in contrast to 4.98% of Virginia's total Medicaid population, it said.

Jessie Barrington, a Cultural Heritage Partners attorney who is representing the tribe, told Law360 in a Friday statement that Fishing Point billed for services provided under Virginia's own Medicaid plan and was reimbursed exactly as that plan requires.

"The commonwealth's last-minute fraud claim, filed just 51 minutes before its court brief, isn't based on any audit or verified finding. It's a litigation stunt. Virginia's real objection is that a tribal provider grew quickly and succeeded. But growth is not fraud. Compliance is not fraud. The state is trying to rebrand legitimate, CMS-approved care as misconduct to distract from its ongoing violations of federal law – and unless the court intervenes, patients and tribal sovereignty will bear the cost," Barrington stated.

Virginia argues that Fishing Point appears undeterred by the payment suspensions or fraud allegations, as it opened a second clinic in Newport News and plans to open a third in Norfolk soon.

"They continue to serve over 1,100 Medicaid beneficiaries monthly – though the Nansemond Tribe itself includes only about 550 tribal members, meaning most of those serviced are likely not American Indian/Alaskan Native People," it told the court. "Yet plaintiffs claim they are in dire straits and suffering deprivations of rights that are nowhere to be found in federal law. They are wrong."

Counsel for the commonwealth didn't immediately respond to a request for additional comment on Friday.

The Nansemond Indian Nation is represented by Jessie Barrington, Gregory A. Werkheiser and Lydia Dexter of Cultural Heritage Partners PLLC.

Virginia is represented by Brian E. Pumphrey, Benjamin L. Hatch, Kathryn M. Barber and John J. Woolard of McGuireWoods LLP.

The case is Nansemond Indian Nation et al. v. Commonwealth of Virginia et al., case number 2:25-cv-00195, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Joyce Hanson. Editing by Patrick Reagan.

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