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## Virginia Tribe Challenges Medicaid Suspension Notice

By **Crystal Owens**

Law360 (May 8, 2025, 10:46 PM EDT) -- A Virginia tribe is asking a federal court to dismiss a state declaration supporting a notice that its Medicaid payments are suspended in its challenge over unpaid claims, arguing that the official lacks personal knowledge of the dispute and the document was tampered with.

The Nansemond Indian Tribe, in a Wednesday **motion**, argued that state Deputy Director of Medical Assistance Services Jeffrey Lunardi's declaration in opposition to its bid for a preliminary injunction that would force the commonwealth to continue to process its Medicaid claims cites no contemporaneous records and relies on a redacted, unauthenticated and selectively altered version of a federal communication.

In addition, they alleged, an April 29 notice received by the tribe that stated payments of its Medicaid claims had been suspended by the state due to a credible allegation of fraud was based on a single-page June 2024 email from Virginia's Centers for Medicare & Medicaid Services that characterized the tribe's activity as a billing surge.

That version of the notice was "selectively edited," according to the motion, and omits any reference to Virginia's Upper Mattaponi Indian Tribe and a response made by the Nansemond Indian Tribe.

According to the tribe, the unaltered version, which was obtained from the state's Attorney General's Office through a November Freedom of Information Act request, makes clear that the Centers for Medicare and Medicaid Services only asked the Department of Medical Assistance Services to vet billing from two providers, not investigate suspected fraud.

"The commonwealth's own documentation confirms there was no evidence of fraud — only a fabricated justification for economic retaliation. Virginia used an altered federal email to suspend Medicaid payments to a tribal health program, and now faces a motion to strike its submission for misconduct and a reply brief showing that the only fraud here was by the state," Jessie Barrington, a Cultural Heritage Partners attorney who is representing the tribe, told Law360 in a Thursday statement.

The tribe and its healthcare entity, Fishing Point Healthcare, **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.

The commonwealth, in an April 29 response, **accused the tribe** of Medicaid billing fraud while telling the court that it had suspended payments while it investigates the tribal healthcare entity.

In two years, Fishing Point 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, Virginia said.

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

The commonwealth, in a Monday **motion**, asked the court to dismiss the lawsuit, arguing that the Nansemond Tribe is trying to usurp Virginia's authority to administer its Medicaid program and to step in as the arbiter of what Medicaid claims should be paid when and at what rates.

"That is not how Medicaid works. Nor is it how federalism works," it argued.

The tribe's arguments on sovereignty fail, it told the court, because a tribal clinic's existence does not preempt all state regulation when that clinic chooses to participate in a state Medicaid program.

Nor does it prevent a state from seeking federal approval to change how it runs its plan and reimburses entities that provide mostly non-tribal members with non-clinician, in-home services, the commonwealth said.

"Just as plaintiffs are not entitled to a preliminary injunction, they are not entitled to proceed past the pleading stage in this action. The named defendants are almost entirely immune from suit. And each of the four claims plaintiffs assert fails on multiple grounds, as plaintiffs pursue causes of action that do not exist, lack any basis in controlling law and are not supported by facts reflecting violations of applicable law," Virginia argued.

The Nansemond Tribe, in its Wednesday motion to strike, argued that Virginia's opposition to its preliminary injunction relies exclusively on the declaration of Lunardi — a defendant in the lawsuit — which it claims offers no audit reports, program integrity memorandums, claims data summaries and evidence of a pending fraud investigation to the Medicaid Fraud Control Unit.

The April 29 payment suspension letter was issued not by the state's Medicaid Fraud Unit or any law enforcement authority, but by the Department of Medical Assistance Service's director of Program Operations, Cheryl J. Roberts, the tribe argued.

"This is more than a procedural curiosity," it said.

Under federal law, it is the responsibility of the state Medicaid agency's program integrity unit to conduct preliminary inquiries into suspected fraud, the tribe said. However, the next step — where indications of fraud exist — is not to unilaterally suspend payments, but to refer the matter to the Medicaid Fraud Unit or an appropriate law enforcement agency for further investigation, it argued.

The substance of the payment suspension letter itself further undermines the state's position, the tribe told the court.

The claim that a patient received both inpatient hospital services and personal care assistance services on the same day is not inherently improper, the tribe argued.

Patients often receive home-based care prior to or after a hospital admission on the same day and personal care assistance services are scheduled in multi-hour blocks, according to the motion.

There is no prohibition on billing legitimate personal care assistance services hours "simply because a hospital admission occurs later that day," the tribe said.

Counsel for Virginia did not immediately respond to a request for comment on Thursday.

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.

--Editing by Vaqas Asghar.

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