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## Husch Blackwell Authors Amicus Brief at Fifth Circuit in Medicaid Financing Litigation

Husch Blackwell filed an amicus curiae brief on behalf of the Texas Hospital Association (THA) in the United States Court of Appeals for the Fifth Circuit, urging the court to affirm a district court ruling that rejected a sweeping reinterpretation of federal Medicaid law by the Centers for Medicare and Medicaid Services (CMS). The case, No. 25-40766, *State of Texas et al v. Oz and CMS et al*, raises fundamental questions about CMS’s authority to redefine the rules governing Medicaid provider taxes without Congressional action, and the consequences of that reinterpretation for hospitals and patients across the state.

Founded in 1930, THA is the principal trade association representing more than 85% of Texas’s acute care hospitals. THA’s members participate in the provider taxes at the center of the case and depend on the Medicaid reimbursement financed by those taxes to maintain financial viability and patient access. Medicaid covers 4.4 million Texans and total Texas Medicaid spending reached \$57 billion in the most recent data year, with the federal government contributing \$37 billion of that sum.

The brief, written by Husch Blackwell Senior Counsel Baxter Morgan, argues that a 2023 CMS informational bulletin and 2024 final rule represent an unlawful departure from the regulatory framework Congress established in 1991 and that CMS has applied consistently for more than three decades. At its core, the dispute turns on a single phrase: whether a prohibited hold-harmless arrangement requires a state actor, as CMS itself recognized repeatedly, or whether CMS may now extend its reach into private hospital arrangements. CMS’s current position contradicts the agency’s prior regulatory statements and relies on a certification standard that exposes

hospitals to potential False Claims Act liability for conduct they cannot observe or control. But in a larger sense, the case implicates CMS regulatory power in the post-*Chevron* world, and the stability of Medicaid reimbursement hospitals need to continue to serve their communities.

The brief identifies four independent grounds for affirmance: 1) the severe and unstudied consequences of CMS's rule for hospitals and patients; 2) a straightforward reading of the statute that requires a state actor that does not exist in the alleged scenario; 3) CMS's violation of the Administrative Procedure Act by reversing a settled interpretation without acknowledging the reversal or the reliance interests built on the prior framework; and 4) the Spending Clause's clear-statement requirement, which demands that conditions on federal funds be unmistakably disclosed.

THA data shows that payments at risk total nearly \$10 billion per year for Texas hospitals, funding that supports maternity care, emergency services, and long-term care for the state's most vulnerable populations. CMS never studied these effects before issuing its rule. CMS posture would create chaos in the healthcare regulatory environment at a time when Congress has limited options for providers through new restrictions enacted in the One Big Beautiful Bill Act. The State of Texas obtained a permanent injunction in federal court and is now defending that action on appeal. Husch Blackwell's brief for THA is part of a large coalition of providers and stakeholders supporting the district court decision.