

PUBLICATION

How Health Care Providers Can Avoid Class Certification

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Introduction

Providing health care services comes with significant risk. When a provider is caring for the physical or emotional well-being of others, much can go wrong that potentially subjects the provider to a lawsuit. What's more, because providers use the same services for hundreds or thousands of individuals, courts often grant class certification in these lawsuits. Although they can increase efficiency, class actions often lead to health care providers paying massive amounts in settlements or damages, which can hinder their ability to provide crucial medical services. A recent order from the U.S. District Court in the Middle District of North Carolina provides insight into how providers can potentially avoid the high cost of facing class actions.

Facts and Procedure of *Hooker*

In *Hooker v. Citadel Salisbury*, a group of former nursing home residents (the Residents) sought class certification in a lawsuit against their former nursing home (the Nursing Home). When the Residents were first admitted, they entered into an agreement with the Nursing Home that outlined the quality of care and services the Residents were to receive. The Nursing Home was originally owned by Genesis Healthcare, and conditions gradually deteriorated as Genesis faced financial trouble. The Nursing Home's conditions deteriorated even further after the Nursing Home was sold to a new owner, the Citadel, in February 2020. The Residents were allegedly subject to "chronic understaffing," causing "failures to provide necessary medication and care." The worsening conditions led to greater scrutiny from the Centers for Medicare and Medicaid Services (CMS), and in May of 2022, CMS terminated the Nursing Home from the Medicaid program, and the Residents were relocated.

The Residents filed a lawsuit against the Nursing Home in federal court, alleging breach of contract and seeking damages for failing to "provide the service or supplies and the level of staffing that they were obligated to supply to the residential population." As part of the lawsuit, the Residents brought a motion for class certification for over 100 possible class members. The motion for class certification alleged the following common questions:

the use of "uniform policies and systems" of management; "[w]hether the law requires the facility to maintain staffing at a reasonable across-the-board level," which is alleged to be 4.1 hours per resident day of "total nurse staffing" and 0.75 hours per resident day of "Registered Nurse staffing"; "[w]hether an express or implied-in-fact contract was formed between residents"; and damages.

The Residents brought their motion to certify under Rule 23 of the Federal Rules of Civil Procedure. The Nursing Home contested the plaintiff's motion, arguing that: (1) the Residents failed to meet the Rule 23(a)(2) requirement of commonality; (2) the Residents failed to meet the Rule 23(b)(3) requirement of predominance; and (3) the Residents failed to qualify for alternative certification on a particular issue under Rule 23(c)(4).

The Court's Analysis in *Hooker*

The court in *Hooker* ultimately denied class certification to the Residents. In its analysis, the court rejected the Residents' arguments for how it satisfied all three of the class certification requirements of Rule 23(a)(2),

23(b)(3), and 23(c)(4). In short, the court denied class certification because the charges of breach of contract by understaffing and damages would have to be resolved individually for each plaintiff rather than together as a unified class.

First, the court considered whether the members of the class had "questions of law or fact common to the class" under Rule 23(a)(2). The Residents argued that the class members share a common legal issue in that their contractual rights with the Nursing Home were identical, so the court would not have to make individual determinations. In response, the Nursing Home argued that the issues of contract formation, breach, and injuries would have to be resolved on an individual basis, making class certification impermissible. In rejecting the Residents' argument, the court focused primarily on the injury component of the Residents' claims. Specifically, the court reasoned that, although the question of staffing level may be common to all class members, it would still have to determine how the disparate staffing impacted each plaintiff. Unlike common class actions like toxic torts or statute-based claims, where courts answer a common question of whether a party met a requirement of law, breach of contract cases based on quality of service require a finding of whether an individual party was deprived the benefit of the bargain. Thus, the question of whether the Nursing Home provided adequate staffing to serve the Residents was not a common legal question that could support class certification.

Second, the court considered whether common questions of law or fact predominate over questions impacting individuals under Rule 23(a)(2). The Residents argued that the common question of "whether the facility was adequately staffed" predominates any individual contractual questions. The court rejected the Residents' argument for this issue primarily on the basis of damages. Calculating damages, which would be the difference between the amount each member paid and the value of the services received, would be a separate, circumstance-based calculation for each class member. The court reasoned that the Nursing Home's affirmative defenses of statutory immunity and arbitration requirements also depend on individual determinations. Accordingly, the court found that common questions of law or fact failed to predominate the individual questions that arise from this case.

Last, the court addressed whether it could grant class certification on any of the particular issues of the Residents' claim under Rule 23(c)(4). The Residents sought class certification for the specific issue of whether the Nursing Home provided adequate staffing levels pursuant to its agreement with the Residents. In denying class certification, the court noted that the issue of adequate staffing would merely provide evidence for one basis of material breach. The court would still need to make individual determinations for questions of adequate service and contract formation. As such, granting class certification for that particular issue would not increase the efficiency of the litigation nor move it forward in a significant manner.

Tips for Health Care Providers to Avoid Class Certification

Class actions are a risk for all health care providers. Providing medical services to large amounts of individuals creates the possibility that anything that goes wrong for one individual receiving a service could go wrong for countless others receiving the same service. Health care providers can learn from *Hooker v. Citadel Salisbury* and reduce the risk of facing a class action against them by applying the following steps:

1. Frame contracts with patients and residents around quality of service rather than quantifiable or measurable standards.

Perhaps the primary reason the Nursing Home in *Hooker* was able to avoid a class action was that its contracts with its former residents were service based. If the court had granted class certification, it would have had to make individual determinations of whether the Nursing Home met the agreed-upon quality of service for each resident. Health care providers can avoid class actions in similar cases by using contracts with residents that focus primarily on service-based quality of care. Such contracts will decrease the likelihood of a court

granting a class certification against a health care provider because the question of whether the provider breached will depend on the particular injuries sustained by each resident. On the other hand, if providers use form contracts for all residents where the provider is obligated to provide quantifiable standards, such as staffing levels or medicine quotas, class certification is more likely because a failure to meet the standard for one resident could be common to all residents. The issue of breach would turn on whether the provider met the agreed-upon standard rather than the extent to which each individual resident was injured by a failure to provide adequate service. Accordingly, using qualitative, service-based contracts can help health care providers avoid class certification in lawsuits against them.

2. Be careful to follow all state and federal statutory requirements for health care service.

Although the Nursing Home in *Hooker* was able to avoid class certification for allegedly failing to provide adequate staffing, the court's conclusion might have been different if North Carolina had a statute that set a minimum staffing level for long term care facilities. The court distinguished the facts in *Hooker* from a similar California case where class certification was granted because the health care provider in that case violated a statutory requirement rather than a contractual obligation. Health care providers will be unable to avoid class certification by focusing on particularized injuries if the lawsuit is brought under a statute that imposes a minimum staffing level or some other quantitative standard. In such instances, potential class members could point to the failure to meet the statutory standard to show there is a common question of law on which to base class certification. By adopting systems and structures that ensure they are following any statutory or regulatory standard of care for patients, providers can limit the types of claims that are brought against them to causes of action, such as breach of contract, that depend on how a particular party was injured.

3. Distinguish claims against you from the types of claims that are commonly granted class certification.

Health care providers can also avoid class certification by identifying how the facts of the lawsuit they face are distinct from the types of cases where class certification is typically granted. The Residents in *Hooker* argued that, like a toxic tort case, the court could resolve the general causation issue of whether understaffing led to the Residents' injury. The court rejected this argument, however, noting that breach of contract cases, which require showings of certain and definite terms and materiality, lack the general causation nature of a toxic tort case. Health care providers can seek to avoid class certification by showing a claim they face requires factual findings that are particular to each potential class member's circumstances. For example, if a provider can show that an alleged breach impacted one potential class member differently from another, they have a strong chance of avoiding class certification.

4. Remove potential class actions to federal court.

Health care providers may be able to avoid class certification by removing the case to federal court. In *Hooker*, the Residents used three Arkansas Supreme Court cases addressing similar claims to argue that other courts have certified classes on similar facts. However, the court noted that Arkansas courts do not "demand the same rigorous analysis" for class certification when applying the Arkansas Rules of Civil Procedure as do federal courts when applying the federal rules. If a health care provider is initially sued in a state court with less stringent class certification rules, the provider will have a better chance of avoiding a class action if they timely seek to remove the case to federal court. Providers should be careful, however, because it is possible the inverse of this sentiment is also true. Some states may have more stringent class certification requirements than federal courts; in which case, it would be in the provider's best interest to remain in state court. Providers should do their due diligence and see how courts apply a given jurisdiction's class certification rules.

5. Assert affirmative defenses that would require the court to analyze how individual parties were impacted.

Asserting affirmative defenses is another valuable tool for health care providers seeking to avoid class certification. In *Hooker*, the court observed that the Nursing Home's affirmative defenses complicated any attempt to resolve common issues. Class certification is less likely to lead to more efficient litigation if the court must consider affirmative defenses that "depend on facts peculiar to each plaintiff's case." For example, the Nursing Home in *Hooker* asserted the affirmative defense of arbitration, which would put class members subject to such provisions in a "different legal position" than those who were not. Although an affirmative defense alone is not enough to avoid class certification, it can help show the court that each class member has a unique position that must be considered. To challenge class certification health care providers should assert any available affirmative defense. Statutory immunity, statute of limitations, contributory negligence, consent, and waiver are a few examples of affirmative defenses that could require a court to consider facts specific to an individual class member.

Conclusion

The court in *Hooker* denied class certification because the claims for breach of contract and damages were unique to each potential class member. Health care providers can learn from *Hooker* and frame claims against them as specific to the individual who brought it. Doing so can help providers avoid the high costs of class actions.

If you have questions about this topic, please reach out to [Craig Conley](#) or any member of Baker Donelson's [Long Term Care Team](#).