



September 24, 2019

Court Vacates Rule That Lowered Medicare Payments to Off-Campus Clinics

Hospitals can breathe (at least temporarily) a sigh of relief as the U.S. District Court for the District of Columbia determined that the Centers for Medicare & Medicaid Services (CMS) exceeded its statutory authority when it issued a rule that reduced payment rates for evaluation and management services at off-campus, hospital-based clinics. The decision was issued on Sept. 17, 2019, in *American Hospital Association v. Azar*, Dist. Ct. D.C., No. 1:18-cv-02841.

In an effort to curtail what it views as unnecessary increases in the volume of covered outpatient services at off-campus hospital clinics, CMS finalized its “site neutral” rule in November 2018. The site neutral rule reduced payment rates so services provided at off-campus clinics would be reimbursed at the same rate as when provided in a physician’s office. The rule had gone through the notice-and-comment rulemaking process, during which CMS considered and rejected arguments by the American Hospital Association, the Association of American Medical Colleges, and approximately 40 hospital systems (the plaintiffs in *Azar*) against the rule. Physician groups, on the other hand, had largely supported the new policy in the rulemaking process. The rule has been in effect since Jan. 1, 2019.

In evaluating the validity of the rule, Judge Rosemary Collyer determined that the site neutral rule’s method for adjusting reimbursement rates failed to follow statutory requirements. Specifically, 42 U.S.C. § 1395l(t)(2)(D)-(E) and (t)(9)(B) requires any adjustments to relative payment weights be budget neutral, meaning that it cannot cause a change in CMS’ estimated expenditures for the year. Alternatively, CMS must update the conversion factor to apply across-the-board cuts, as the guiding statute does not allow for service-specific, non-budget-neutral cuts. Because CMS failed to implement a methodology that reduced the payments in a budget-neutral manner, the court vacated the rule.

The debate over Medicare reimbursement to off-campus hospital-based clinics is, however, far from over. The U.S. District Court recognized that “CMS believes it is paying millions of taxpayer dollars for patient services in hospital outpatient departments that could be provided at less expense in physician offices. CMS may be correct. But CMS was not authorized to ignore the statutory process” CMS now has the option of restarting the rulemaking process to address the deficiencies highlighted by the court, or appealing the decision to the U.S. Court of Appeals for the District of Columbia Circuit. In the meantime, off-campus hospital-based clinics can expect reimbursement rates to return to their previous levels.

Brownstein Hyatt Farber Schreck

Darryl T. Landahl
Shareholder
dlandahl@bhfs.com
303.223.1244

Erin M. Eiselein
Shareholder
eeiselein@bhfs.com
303.223.1251

Ishra K. Solieman
Staff Attorney
isolieman@bhfs.com
303.260.1880

Amanda Hutson
Law Clerk
ahutson@bhfs.com
303.223.1112

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