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Medicare

Court Finds Notice of Deadline Inadequate, Orders Payment of Medical Education Claims

A federal district court reversed a decision denying three Philadelphia hospitals supplemental medical education payments authorized by the Balanced Budget Act of 1997, finding that the secretary of health and human services failed to give them adequate notice that the timing requirements for filing Part A Medicare claims through fiscal intermediaries also applied to claims for enrollees treated under Medicare Part C (*Hospital of the University of Pennsylvania v. Sebelius*, D.D.C., No. 1:11-cv-464, 3/20/12).

Ruling on the issue for the second time, Judge John D. Bates of the U.S. District Court for the District of Columbia found that the need for clear notice from the HHS secretary was especially acute given that the agency's interpretation was at odds with relevant regulatory language.

As the court put it, ''[W]hen an agency's reading of the relevant regulation is, to put the point mildly, quite strained, then the obligation on the agency to provide adequate notice is at its peak, because a reasonable reader of the regulations could quite naturally reach a conclusion contrary to that reached by the agency.''

The court did not reach the issue of whether the Part A deadlines applied to Part C claims for medical education payments, finding simply that they could not be enforced against the plaintiffs without notice.

Part C Claims. The case arose when the intermediary denied payments to the Hospital of the University of Pennsylvania, Presbyterian Medical Center, and Pennsylvania Hospital for services they provided to Part C Medicare recipients in fiscal years 1999 and 2000, finding that they were not timely filed.

As the court explained, before Congress created Medicare Part C with the Balanced Budget Act of 1997, only services provided to Medicare Part A or Part B beneficiaries were counted in calculating indirect and direct medical education payments. BBA , however, directed the secretary to make additional IME and GME payments, phased in over five years, for services provided to Medicare HMO enrollees under Part C.

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—JUDGE JOHN D. BATES

To receive payment under Medicare Part A, hospitals submit claim forms (UB-92 forms) to their fiscal intermediaries. The submission deadlines are set out at 42 C.F.R. § 424.44(a), which requires the claims to be mailed or delivered to the intermediary on or before Dec. 31 of the following year for services that were furnished during the first nine months of a calendar year and on or before Dec. 31 of the second following year for services that were furnished during the last three months of the calendar.

Section 424.30 states that the subpart (on claims for payment) applies except when services are furnished on a prepaid capitation basis by a health maintenance organization, a competitive medical plan, or a health care prepayment plan.

Because Medicare Part C services are furnished on a prepaid capitation basis by a health maintenance organization, those claims are exempted from the deadlines, raising the question at issue in this case—whether the regulatory exception also applies to claims for graduate medical education payments associated with the services provided to Part C enrollees.

After the intermediary denied payment, the plaintiffs appealed to the Provider Reimbursement Review Board, which agreed with them that the claim filing requirements did not apply to claims for supplemental education payments.

The Medicare administrator reversed the PRRB's decision, and the plaintiffs sought district court review for the first time.

In its first review of the case, the district court remanded the case to the secretary to explain why plaintiffs had sufficient notice of the time limits for filing these claims and why the time limits were proper.

'Loma Linda' Case. After the district court's first ruling in the case, the U.S. Court of Appeals for the District of Columbia Circuit ruled in a similar case, *Loma Linda Univ. Med. Ctr. v. Sebelius*, 408 Fed. Appx. 383 (2010), that hospitals were not put on notice of the deadlines for filing claims like those at issue.

The *Loma Linda* court held that the secretary ''did not inform hospitals'' that the Part A time limits applied to claims for IME/GME payments for Part C enrollees and therefore ''Loma Linda's delay in filing is not a basis for rejecting the hospital's claims.''

The appeals court rejected the secretary's insistence that Loma Linda knew about the deadline for submitting the bills at issue, as well as the administrator's determination that three documents from the Centers for Medicare & Medicaid Services—a May 12, 1998, rule, PM A-98-21, and a July 13, 1998, bulletin—implicitly put Loma Linda on notice.

The appeals court found no language in any of the documents regarding time limits or any mention of the regulation governing deadlines for Part A claims.

Secretary's Remand Ruling. On remand, the administrator decided that the claims at issue were not for services furnished on a prepaid capitation basis by a health maintenance organization, but for services related to the IME/GME teaching costs attributable to inpatient services provided to managed care enrollees.

Plaintiffs' attorney Mark H. Gallant, with Cozen O'Conner, Washington, told BNA the long-running litigation ''has been like a Middle East war.''

The administrator concluded that ''the provision for this additional payment for managed care enrollees is within [a] framework of a pre-existing methodology for IME/GME payments under Medicare Part A and not under the exception at 42 CFR § 424.30 provided for Medicare Part C claims.''

The administrator found that ''[t]he requirement that a Provider submit a claim UB-92 form cannot be separated from the requirement that it be filed within the prescribed timeframes for such a form under 42 CFR § 424.30.''

The administrator also concluded that the teaching hospital community and its associations knew the ''filing of the UB-92 form was, like all other claims, required to be done within the usual timeframes,'' citing a Nov. 2, 1999, Memorandum from the Association of American Medical Colleges.

'Ascertainable Certainty' Standard. Reversing the secretary for the second time, the district court explained that the D.C. Circuit has endorsed the ''ascertainable certainty'' standard for providing fair notice of regulatory requirements: ''If, by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with 'ascertainable certainty,' the standards with which the agency expects parties to conform, then the agency has fairly notified a petitioner of the agency's interpretation.''

The court found that ''this case presents a situation that is arguably the reverse of the situation in which clear regulations provide notice to regulated parties, because here the agency's interpretation of its regulation may actually contradict the regulatory text.''

The regulation at issue effectively reads that claims must be filed in all cases except when services are furnished under Part C, the court found, adding that the ''Administrator's decision on remand in this case suggests unacceptable non-acquiescence to *Loma Linda*-i.e. to D.C. Circuit Law.''

The district court said it found objectionable the secretary's statements that ''the teaching hospital community and its associations knew the filing of the UB-92 form was, like all other claims, required to be done within the usual timeframes,'' as evidenced by the AAMC memorandum.

''A court of this district, affirmed by the D.C. Circuit, has explicitly ruled that there was no 'irrefutable connection' between using UB-92s and the timing deadlines,'' Bates wrote, adding: ''The Administrator's stubborn repetition of this argument is unacceptable.''

The court also rejected the secretary's argument that evidence the plaintiffs ''knew'' or ''understood'' the deadlines meant that they received ''actual notice'' of the rules.

Decision Brings Some 'Closure.' Plaintiffs' attorney Mark H. Gallant, with Cozen O'Conner, Washington, told BNA the long-running litigation ''has been like a Middle East war.''

Judge Bates has been ''extremely tolerant of the agency'' Gallant said, but even he, in a very restrained way, expressed frustration with the agency's non-acquiescence in *Loma Linda*. ''There are a lot of other cases out there awaiting closure,'' Gallant said, adding ''This decision puts an end to that'' and brings to closure the long exodus they have faced.

Calling the agency's behavior ''puzzling,'' Gallant said it should ''just amend the regulation to say what they want it to say.''

William Miller, public information officer for the U.S. Attorney's Office for the District of Columbia, said the office ''typically does not comment on cases beyond what is submitted or stated to the court. The U.S. Attorney's Office is reviewing this case and has no further comment at this time.''

The hospitals were represented by Iden Grant Martyn and Mark H. Gallant, of Cozen O'Connor in Washington.

The secretary was represented by Javier M. Guzman of the U.S. Attorney's Office in Washington.

The opinion is at http://op.bna.com/hl.nsf/r?Open=lroi-8slpy8.

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