



Bagnall v. Becerra, 2022 WL 211089 (2d Cir.)

Topics Covered: Medicaid & Medicare

Outcome: Favorable

Issue

The issue in this case was whether Medicare beneficiaries can appeal the denial of hospital inpatient status under the Centers for Medicare & Medicaid Services' (CMS) "two midnight" rule.

AMA Interest

The AMA believes that the "two midnight" rule should be repealed and generally opposes the requirement that physicians estimate and certify the length of a patient's hospital stay at the time of admission.

Case Summary

Medicare rules specify that inpatient classification is only appropriate when a physician or other health care provider anticipates on initial presentation to the hospital that the patient will require at least 24 hours of hospitalization. CMS further restricts inpatient status through its "two-midnight" rule. The rule states that a patient may only be properly billed as an inpatient if the length of stay crosses two midnights and is supported by documentation at the time of admission.

The plaintiffs are seven Medicare beneficiaries, who each presented to a hospital emergency department, with the treating physician then determining that they should be admitted as inpatients. During the hospital stay or shortly thereafter, a hospital committee responsible for submitting claims for payment to Medicare changed the patient's designation from inpatient to observation status in order to comply with CMS instructions and guidance. These patients were then either billed for services that might otherwise have been covered under Part A insurance and/or were unable to receive follow-up rehabilitative care for failure to satisfy the three-day inpatient requirement.

The litigation, dating back to 2011, has resulted in several opinions and appeals, but most recently, the district court found CMS often scrutinizes and second-guesses physician decisions on inpatient status. Notwithstanding CMS's attempt to characterize hospital review committees' decisions as "purely medical," in fact these committees would not exist but for the Medicare program and the standards it enforces for payment, including its "two midnight" rule. After a lengthy bench trial, the court determined that the plaintiffs, having been initially admitted as inpatients but subsequently changed to observation status, had a property interest in their status. Thus, they have a due process right to challenge the change in status. CMS appealed that decision to the Second Circuit.

On January 25, 2022, the Second Circuit affirmed the district court's holding that CMS circumvents due process when it does not allow patients to appeal the determination to classify their stay as under "observation status" as opposed to inpatient hospitalization. This was a favorable decision consistent with the Litigation Center's brief.

Litigation Center Involvement

The AMA and the Connecticut State Medical Society filed an *amicus* brief before the Second Circuit to support the plaintiffs.

Second Circuit Court of Appeals Brief