



Averett v. United States Department of HHS (6th Cir.)

Topics Covered: Medicaid, Regulatory Burdens

Issue

The issue in this case is whether the United States Department of Health and Human Services (HHS) abused its discretion in issuing a regulation to define “primary specialty designation” for purposes of the Medicaid Enhanced Payment Statute (MEPS), 42 U.S.C. § 1396a (a) (13)(C).

AMA Interest

The AMA believes that audits of enhanced payments made to primary care physicians should be conducted pursuant to a flexible formula.

Case Summary

MEPS provides that a state’s Medicaid program must pay an enhanced rate for primary care services furnished by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine. Under the HHS regulations for MEPS, a physician can qualify as a primary care specialist either by (a) being board certified in family medicine, general internal medicine or pediatric medicine or (b) having “furnished evaluation and management services and vaccine administration services ... that equal at least 60 percent of the Medicaid codes he or she has billed, during the last calendar year.” HHS justified the “60 percent of the Medicaid codes ... billed” criterion by indicating it had adopted a similar formula in the Medicare law.

On October 31, 2016, twenty-one Tennessee physicians, all of whom considered themselves primary care doctors but were not board certified, sued HHS for its adoption of the 60 percent formula. They contended that the Tennessee Medicaid Program (TennCare) was auditing them for alleged overpayment under MEPS. But for the 60 percent formula, they alleged, they would not have to repay any of the putative overpayments. They further contended that the 60 percent formula violated the “arbitrary [or] capricious” standard of the Administrative Procedures Act because, contrary to the representations of HHS, the formula adopted under MEPS did not mirror the similar Medicare formula. Thus, they asserted, if the court should declare the 60 percent formula invalid, they would then succeed in their defense of the TennCare overpayment claims. HHS answered the complaint on February 2, 2017.

On April 9, 2018, the court entered summary judgment in favor of the plaintiffs and against HHS. The court found that HHS had no right to impose the 60 percent formula, as MEPS did not authorize such a restriction. Thus the HHS regulation was invalid. The court remanded the case to HHS for further proceedings. The court also determined that TennCare could not recoup money from the plaintiff physicians as a result of the now invalidated HHS regulation, although it did not enjoin TennCare.

HHS has now appealed to the Sixth Circuit.

Litigation Center Involvement

At the request of the Tennessee Medical Association, the Litigation Center provided financial assistance to the plaintiff physicians.