



General Medicine v. Azar, 963 F.3d 516 (6th Cir. 2020)

Topics Covered: Medicare

Outcome: Unfavorable

Issue

The issue in this case was whether a Medicare recovery auditor's failure to provide a statutorily required notice invalidated the audit and the subsequent collection action against the medical practice.

Case Summary

The case arises from an audit of several long-term care facilities by a Medicare independent contractor. The Medicare auditor was required, by statute, to provide notice of the audit, but it did not. The care facilities were unable to show prejudice arising from the lack of notice, other than general prejudice arising from the passage of time and the ensuing difficulty in obtaining the medical records needed to verify the legitimacy of the services rendered.

At the district court, the care facilities moved for summary judgment due to the late notice, but their motion was denied because they failed to demonstrate specific prejudice. Final judgment was then entered against the care facilities.

The care facilities appealed to the United States Court of Appeals for the Sixth Circuit. By a split decision, the Sixth Circuit affirmed the judgment against the care facilities. The court reasoned that a provider may be entitled to a remedy if a CMS contractor fails to give the provider notice of a post-payment Medicare audit in violation of 42 U.S.C. § 1395ddd(f)(7)(A) *and* the provider is substantially prejudiced by the lack of notice. However, here, the court ruled that substantial evidence supported the Medicare Appeals Council's conclusion that General Medicine was not prejudiced by the lack of notice.

Litigation Center Involvement

The Litigation Center and the Michigan State Medical Society had filed an *amicus* brief in support of the care facilities.

United States Court of Appeals for the Sixth Circuit brief