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Court Voids Payment Cuts to Provider-Based Departments, Ends Site Neutrality for Now

By Nina Youngstrom

In a big win for hospitals nationally, a federal court Sept. 17 killed the site-neutral payment policy in the 2019 Outpatient Prospective Payment System (OPPS) regulation. The ruling restores full payments to off-campus, provider-based departments (PBDs) for evaluation and management (E/M) services, which experienced sharp cuts this year and faced more next year.

The U.S. District Court for the District of Columbia said CMS overstepped when it selectively changed payments so they would be comparable to payments for E/M services performed at freestanding physician clinics.

“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 for setting payment rates in the Outpatient Prospective Payment System and to lower payments only for certain services performed by certain providers,” Judge Rosemary Collyer said in the decision, which granted a motion filed by the American Hospital Association and dozens of hospitals to throw out the site-neutral policy on summary judgment.

“The court has wiped the [policy] from the books,” says attorney Joel McElvain, former chief health program litigator at the Department of Justice. Hospitals “are entitled to the correct payment rates.” He expects CMS to appeal, however. “We will engage with [CMS] in discussions on next steps, so it’s probably not the end of the story,” says McElvain, with King & Spalding in Washington, D.C., which represented a consortium of more than 40 hospitals in one of two cases, which were consolidated by the court.

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