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Court Won't Stop Recoupment During Appeal; There May Be Hope for Backlog

By Nina Youngstrom

Taking a different view than two courts in Texas, a federal judge in Florida turned down a provider's request to keep its Medicare reimbursement until the long and winding road of the appeals process is over.

Judge Paul G. Byron of the U.S. District Court for the Middle District of Florida refused to grant a preliminary injunction to Alpha Home Health Solutions LLC, saying the fact it may go out of business in the meantime isn't relevant. When doing business with Medicare, providers know they take a risk their payments will be delayed.

"...the contingent nature of the payment system makes clear that a health care provider lacks a constitutionally protected interest in an overpayment of federal funds," the decision states. Alpha appealed the decision to the U.S. Court of Appeals for the 11th Circuit and sought a preliminary injunction on the recoupment while a decision is pending. It was denied Jan. 28 after initially being denied Nov. 27, 2018.

This is a setback for providers, who had been heartened by temporary restraining orders on Medicare recoupment granted to Family Rehabilitation ("Court Opens Door to Stopping Recoupment Until Providers Exhaust Their Appeals," *RMC* 27, no. 14:1; "News Briefs," *RMC* 27, no. 24:8) and Adams EMS ("In Second Case, Judge Suspends Recoupment of Overpayment Until ALJ Decides Appeal," *RMC* 27, no. 27:1). The providers are keeping their Medicare payments while they await the outcome of their appeals before an administrative law judge (ALJ).

The Florida decision "doesn't reverse what happened in Texas, but it is definitely disturbing," says attorney Ross Burris, with Polsinelli in Atlanta, Georgia. "The providers and HHS used the same playbook, but in this case the judge said no. Is this provider going to get an injunction because it's needy? No, the judge doesn't care it's needy."

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