

Federal Judge Overturns Medicare's Site-Neutral Payment Policy

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CMS exceeded its authority by expanding a site-neutral payment policy to hospital clinic visits, a federal judge ruled in a major win for hospitals. A federal judge on Tuesday tossed a site-neutral payment policy from Medicare that reduced the reimbursement rates for some hospital clinic visits.

US District Judge Rosemary M. Collyer ruled that CMS exceeded its authority by extending a site-neutral payment policy to clinic visits performed at off-campus, provider-based hospital departments as a method of controlling unnecessary increases in the volume and Medicare costs of such services in that setting, which CMS estimated to increased by 5.3 percent and \$75 billion this year.

The policy achieves CMS goals by setting the Medicare reimbursement rates for hospital outpatient providers to the same level as those paid to independent physicians.

However, Judge Collyer argued that the CMS' method for controlling unnecessary increases in hospital outpatient volume does not satisfy the definition of "method" described by law.

The law, she wrote, "does not make clear what a 'method' is, but it does make clear what a 'method' is not: it is not a price-setting tool, and the government's effort to wield it in such a manner is manifestly inconsistent with the statutory scheme." CMS cannot "shoehorn a 'method' into the multi-faceted congressional payment scheme," especially in a non-budget neutral manner, Judge Collyer added.

"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," she wrote in her decision. "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."

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The decision is a major win for hospitals, which banded together shortly after the final rule's release last year to challenge the expanded site-neutral payment policy. Overturning the rule will stop CMS from reducing reimbursement rates to hospitals by a total of \$380 million this year and \$760 million in 2020.

The American Hospital Association (AHA) and Association of American Medical Colleges (AAMC), applauded Judge Collyer's decision in a joint statement emailed to journalists.

"The ruling, which will allow hospitals to maintain access to important services for patients and communities, affirmed that the cuts directly undercut the clear intent of Congress to protect hospital outpatient departments because of the many real and crucial differences between them and other sites of care," the associations wrote.

The associations, along with three other healthcare organizations, were plaintiffs in the case. The groups sued CMS shortly after the agency finalized the rule, arguing the increase in hospital outpatient volume is appropriate considering the increase in Medicare-eligible individuals and the ability of hospitals to safely perform more services in the outpatient versus inpatient setting.

Since CMS enacted the expanded site-neutral payment policy on January 1, hospitals have already lost Medicare reimbursement this year for clinic visits, which CMS has said are the most commonly billed services under the Outpatient Prospective Payment System.