

Court finds for teaching hospitals in “fellow weighting penalty” case

May 26, 2021

On May 17, 2021, the US District Court for the District of Columbia granted summary judgment in favor of a group of teaching hospitals that claimed CMS unlawfully reduced the weights of fellows and other residents training beyond their initial residency periods when calculating the plaintiff hospitals’ direct GME reimbursement. Siding with the hospitals, Judge Timothy J. Kelly held in *Milton S. Hershey Medical Center et al., v. Becerra*, No. 19-2680, that a Medicare regulation that effectively changes the statutory weighting factors assigned to residents and fellows is unlawful as applied to calculate the plaintiffs’ direct GME reimbursement, because it contravenes the plain language of the Medicare statute.

Under the Medicare statute, residents who are training within the so-called “initial residency period” or “IRP” — i.e., the period of time it takes to become board-certified in the specialty into which residents first match — are weighted as 1.0 full-time equivalent (FTE). Residents who train in periods of time beyond their IRP, many of whom are fellows, are weighted as 0.5 FTE. The statute also limits the total number of unweighted FTEs a provider may count in any cost year to the number of FTEs reported in the provider’s 1996 base year (its “cap”).

In 1997, CMS implemented a regulation to effectuate these statutory provisions by reducing the *weighted* number of FTEs a hospital may claim for reimbursement purposes when that hospital’s *unweighted* FTE count exceeds its 1996 FTE cap. Thus, the disputed regulation applies a ratio to reduce the weighted FTE count in proportion to the amount by which the unweighted FTE count exceeds the cap. In short, if a provider exceeds its cap, CMS’s regulatory formula has the perverse effect of reducing a provider’s countable weighted FTEs further and further below its cap the more fellows it trains, effectively penalizing hospitals for training fellows.

In a striking example offered in the opinion, the court demonstrates how a hospital with a cap of 100 FTEs that meets its cap by training 90 residents and 10 fellows would report a weighted FTE count of 95 (because fellows are weighted as 0.5 FTEs), whereas if that same hospital *added* 10 more fellows (now training over its cap with 90 residents and 20 fellows), it would report a *lower* weighted FTE count of just under 91 FTEs. The effect of this calculation as it applies to the plaintiff hospitals, the court concludes, is to impermissibly devalue the fellows, effectively reducing the statutory weighting factor of 0.5.

The Court agreed with the 56 plaintiff hospitals that CMS’s weighting formula, as applied to them, contravenes the unambiguously expressed intent of Congress, because the regulation “effectively overrides the weight that the statute sets for their residents and fellows.” Judge Kelly remanded the case to the Agency to recalculate the plaintiffs’ direct GME payments.

The Agency now has an opportunity to appeal the case to the US Court of Appeals for the DC Circuit. The GME @ Dentons team will follow this case for any further developments. Please reach out if you would like to discuss what this holding may mean for your organization.

Your Key Contacts



Lori Mihalich-Levin
Partner, Washington, DC
D +1 202 408 6942
lori.mihalich-levin@dentons.com



Susan Banks
Partner, Denver
D +1 303 634 4329
susan.banks@dentons.com