

DISTRICT COURT REAFFIRMS DECISION IN FAVOR OF HOSPITALS THAT SPLIT COSTS FOR TRAINING RESIDENTS AT A NONHOSPITAL SITE

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In *Medcenter One Health Systems v. Leavitt* [PDF], No. 1:08-cv-063 (D.N.D. December 21, 2009), the United States District Court for the District of North Dakota reaffirmed its October 2009 order [PDF] granting summary judgment in favor of the plaintiff hospitals in a dispute over medical education reimbursement. The government moved for the court to reconsider its October decision, but the court found that the motion for reconsideration was merely an attempt to re-litigate issues that were briefed and decided in the original opinion. The government also requested that the matter be remanded to CMS for recalculation of medical education reimbursement, but the court noted that the amount in controversy was not a subject of dispute, and instead entered judgment in favor of the plaintiffs.

The plaintiffs, two teaching hospitals with family practice residency programs, split the costs of training residents at a family practice center, which was otherwise run and funded by the University Of North Dakota School Of Medicine (the University). The University used direct sources of reimbursement, such as patient payments, to pay the expenses associated with operating the family practice center. The University billed any excess costs associated with the family practice center to the two hospital plaintiffs, which split the costs under an agreement among the parties.

The fiscal intermediary denied medical education reimbursement for the plaintiffs' 1999-2001 fiscal years on the ground that the plaintiffs had not paid for all or substantially all of the costs of training residents at the nonhospital site. The Intermediary also found that the agreement among the parties did not satisfy regulatory requirement. The Intermediary, however, conceded before the Provider Reimbursement Review Board (PRRB) that documentation the plaintiffs filed with the position papers satisfied the written agreement requirement. The issue of whether the agreement satisfied the written agreement requirement was not central to either the PRRB decision in the plaintiffs' favor or the CMS Administrator decision, which reversed the PRRB.

The plaintiffs appealed the CMS Administrator's decision to the District Court. The government, in its motion for summary judgment, argued that the written agreement among the hospitals and the nonhospital site did not satisfy the regulatory requirements. Upon reviewing the administrative record and the decisions of the PRRB and CMS Administrator, the court found that the government had conceded that the plaintiffs' written agreement with the non-hospital site was acceptable under CMS regulations. Although the CMS Administrator addressed the issue briefly in a footnote, in which he stated that the plaintiffs' documentation did not satisfy the written agreement requirement, the court found that the issue was of no relevance to the Administrator's ultimate decision.

Having determined that the written agreement requirement was not properly before it, the court addressed whether the hospitals had incurred all or substantially all of the costs of education for residents training in the nonhospital site. The government contended that the plaintiffs' arrangement, whereby they split the costs of running the residency program 50/50, was not permissible under regulations in effect for 1999-2001. The court determined that the government's reimbursement determination was based on regulations promulgated in 2003 and 2007, and that the denial of medical education reimbursement for resident time spent in the nonhospital site relied on impermissible retroactive rulemaking. The court therefore held that the government's position denying reimbursement for resident training in the nonhospital site was arbitrary and capricious, and entered judgment in favor of the plaintiffs.

Ober|Kaler's Comments: In *Medcenter*, the government attempted to expand the dispute at the district court level beyond the grounds of the CMS Administrator decision below. The court rightly rejected this litigation strategy. In rebuffing the government's attempt to raise legal issues that were not contested at the administrative level, the court reaffirmed that the government may not embellish the administrative record with arguments that were not relevant to its original determination. Moreover, the court rejected the government's attempt to impose retroactively developed standards on the hospitals' agreements. The court's decision, therefore, could be of some assistance to providers in other cases.