

Lawsuit Challenges Method Used to Determine Medicare Rates

A group of primary care physicians from Georgia have alleged in a federal lawsuit that the Centers for Medicare and Medicaid Services (CMS) violates federal law by relying on the advice of a committee of the American Medical Association (AMA) in setting Medicare rates for physician services. Since 1991, the Relative Value Scale Update Committee (RUC) of the AMA has proposed Medicare rates for approximately 7,000 medical procedures to CMS.

According to AMA statistics, CMS has accepted over 94% of the RUC's recommendations on rates. The primary care physicians who are the plaintiffs in the lawsuit argue that CMS has made the RUC an unofficial federal advisory committee. Federal law requires that advisory committees hold public meetings and keep public records. But the RUC meetings are by invitation only, member votes are secret, and minutes of the meetings are not publically accessible. Furthermore, the plaintiffs argue the relationship between the RUC and CMS is unconstitutional because CMS is impermissibly delegating its duty to establish Medicare rates to the RUC.

The plaintiffs in this lawsuit argue that the RUC is contributing to the well-documented salary disparity between primary care physicians and specialists. Of the 26 voting members of the RUC, only a very small number represent primary care even though primary care physicians provide more than 40% of office visits paid for by Medicare. The plaintiffs argue that the specialists on the RUC are skewing Medicare rates in favor of specialists, which is contributing to the critical shortage of primary care physicians in the United States.

The lawsuit, filed near CMS headquarters in Maryland, is in its early stages. CMS argues that the physicians' lawsuit is without merit, and it has made a preliminary motion to dismiss the claim. The judge will likely decide in early 2012 whether the lawsuit can continue. Even if the lawsuit is ultimately unsuccessful, it has added fuel to the national controversy about the propriety of the AMA's role in setting Medicare rates and could lead to congressional or executive action in the future.