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CMS's Non-Hospital Training Rules Again Upheld

By: Thomas W. Coons

In the recently decided case *University Med. Ctr., Inc. v. Sebelius* [PDF], the U.S. District Court for the District of Columbia upheld CMS policies regarding non-hospital training agreements as those policies were applied in 1999. As all teaching programs are aware, hospitals have been permitted since 1997 to include, in both their indirect medical education (IME) and direct medical education (DGME) payment calculations, time spent by residents training in non-hospital sites. As a condition to hospitals' receiving those payments, however, CMS regulations have required that there be a written agreement between the hospital and non-hospital site and that the agreement specify that the hospital was incurring all or substantially all of the costs of the non-hospital site training. CMS then interpreted this policy as requiring that the written agreement be in place prior to the training actually taking place. Plaintiff University Medical Center challenged these requirements as applied to training that took place in 1999. The court, however, rejected the challenge.

The court first ruled that the written agreement requirement did not violate the Medicare statute, citing earlier precedent in which the court had ruled that CMS possessed the authority to impose a written agreement requirement. The court then upheld the CMS interpretation that the written agreement be in place before the training actually occurs. The court noted that, while this requirement is not mentioned in the statute, CMS has the authority to implement reasonable requirements that are not explicitly mentioned in the statute. The court held that the fact that the Secretary had modified the written agreement requirement in 2004 was of no moment because CMS is entitled to change its mind about certain requirements and that this does not indicate that the old requirement was unreasonable or violated the statute. Finally, the court addressed the hospital's assertion that CMS had failed to provide adequate notice of the contemporaneous

written agreement requirement. The court observed that a "fair notice" standard applies in the District of Columbia Circuit requiring that the government furnish parties with adequate notice of the agency's interpretation. At the same time, however, CMS is given considerable deference in interpreting its own regulations. Thus, the court said, the fair notice doctrine must be read in light of the appropriate deference given to CMS. Under such a standard, the court concluded, CMS had given adequate notice to the hospitals that written agreements would need to be entered into by hospitals and non-hospital sites before any training takes place.

Ober|Kaler's Comments

The court's ruling is far from surprising given that the courts have consistently upheld CMS's application of its non-hospital training rules to a variety of facts. Moreover, in light of the changes directed by the Affordable Care Act (ACA), the decision relating to 1999 has little current impact. Nevertheless, for those pre-ACA cases that are in the appeals "pipeline," there remain non-hospital site issues where CMS's position is quite questionable even under an extremely deferential standard. Such cases include, for example, challenges to the application of CMS's "volunteer" policy under certain circumstances. Those cases should continue to be pursued.