

NYC Hospitals Sue HHS Over Medicare Cuts for Low-Income Care

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A trio of New York City hospitals sued the Biden administration for adopting a payment formula that dramatically cuts Medicare reimbursement for low-income patients.

The lawsuit filed Monday in the US District Court for the District of Columbia by Montefiore Medical Center and two hospitals under the NewYork-Presbyterian hospital system alleges the Centers for Medicare & Medicaid Services issued a final rule in 2023 that re-adopts a 2004 Medicare reimbursement formula that would result in the hospitals “losing billions of dollars in funding” by retroactively recouping reimbursement.

The case centers on which patients should be counted in a formula that decides how much Medicare pays hospitals that care for a disproportionate share of low-income people.

Traditionally, the formula factored in patients enrolled in original Medicare plans as well as other low-income groups, but not those in private Medicare Advantage plans, the lawsuit said.

In 2004, however, the CMS issued a final rule that would lower payments to hospitals by including Medicare Advantage enrollees in the calculation with the rationale that all Medicare Advantage patients are “entitled to Part A.” Medicare Part A covers in-patient hospital services.

These changes were eventually challenged in a trio of high-profile cases, culminating in the 2019 US Supreme Court decision in *Azar v. Allina Health Services* that found “the public had a right to notice and comment before the government could adopt the policy at hand.”

The lawsuit claims the CMS tried again to advance the same policies as the contested 2004 final rule, this time through a 2023 final rule that would give the CMS the ability to retroactively recoup reimbursement made to hospitals for periods prior to 2013.

The plaintiffs say this move runs “contrary to law, exceeds the agency’s retroactive rulemaking authority under the Medicare statute, and is arbitrary and capricious for failing any test of reasoned decision-making.”

The plaintiffs ask the court to declare the 2023 final rule invalid and set aside payment determinations reflecting the contested policy. They also ask the court to allow the HHS to recalculate the hospitals’ reimbursement using the pre-2004 reimbursement methodology.

Ropes & Gray LLP represents the hospitals.

The case is *Montefiore Med. Ctr. v. Becerra*, D.D.C., No. 1:24-cv-02991, complaint filed 10/21/24.