

Report on Medicare Compliance Volume 27, Number 14. April 16, 2018 Court Opens Door to Stopping Recoupment Until Providers Exhaust Their Appeals

By Nina Youngstrom

Hospitals and other providers may have a better shot at keeping their Medicare reimbursement after claim denials until they complete the entire appeals process in light of a March 27 appeals court decision.

The U.S. Court of Appeals for the Fifth Circuit gave Family Rehabilitation, Inc., a Texas home health provider, the green light to try to stop recoupment even though it hasn't exhausted all HHS administrative remedies. The Fifth Circuit overturned a decision by a federal district court, allowing it to consider the provider's request to suspend recoupment until it concludes its administrative appeals.

Other providers have tried in vain to stop recoupment during appeals, but this time a court was receptive, says Atlanta attorney Ross Burris, with Polsinelli. "Maybe providers have a fighting chance in court to stop recoupment," he says. It's not a done deal because Family Rehabilitation still has to convince the district court to see things its way, he says, but it would be significant if providers could hold onto their money all the way to the administrative law judge (ALJ), where, at least in the case of hospitals, they often win and therefore would never have to part with the funds.

At stake in the Family Rehabilitation case is \$7.6 million in purported overpayments. About two years ago, a zone program integrity contractor (ZPIC) audited 43 claims and found errors associated with 93% of them. Most were related to the initial home health certification. The ZPIC then extrapolated the error to come up with an overpayment amount of \$7,885,803.23, and the Medicare administrative contractor (MAC) sent Family Rehabilitation a repayment demand for that amount. That set the appeals process in motion, the court decision explained.

This document is only available to subscribers. Please [log in](#) or [purchase access](#).

[Purchase Login](#)