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Court: Patients Must Be Able to Appeal Status Change from Inpatient to Observation

By Nina Youngstrom

In a development that will shake up hospital compliance and utilization management, the U.S. Court of Appeals for the Second Circuit said Jan. 25 that the constitutional rights of Medicare beneficiaries are violated when they can't appeal a hospital's decision to change their status from an inpatient to an outpatient receiving observation services.^[1] The court ordered CMS to allow an appeals process for denials of inpatient status under certain circumstances, according to the decision, which has national reach.

It remains to be seen whether HHS asks for a stay pending an appeal, however, although the next level of appeal is to the Supreme Court.

"It's a very dramatic result," said San Francisco attorney Judy Waltz, with Foley & Lardner LLP. But there are still some unknowns. "It's uncertain how CMS will apply it," she said. CMS could open appeal doors to other beneficiaries who don't check every box in the court decision, which would simplify life for hospitals, said Edward Hu, M.D., system executive director of physician advisor services at UNC Health in North Carolina. "It makes it harder to properly inform patients who have appeal rights without mistakenly informing patients who don't have appeal rights," he said. What that distinction is won't be clear without hearing more from CMS, Waltz noted.

The appeals court decision came down in a class-action lawsuit filed by beneficiaries with Medicare Part A coverage who were admitted as inpatients but changed to outpatients receiving observation services. They alleged HHS violated their due process rights because they have no administrative procedure to appeal the hospital's reclassification.

They will have one soon, and it will be available to all Medicare beneficiaries in the same boat, Waltz said. The Center for Medicare Advocacy, which spearheaded the lawsuit, reinforced that "the class is open-ended," according to its website.^[2] That means beneficiaries who aren't part of the lawsuit also are eligible to appeal. As explained in the federal district court decision that was affirmed by the Circuit Court, the appeal rights apply to:

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