



Barrows v. Burwell, 2015 U.S. App. LEXIS 986 (2d Cir. 2014)

Topics Covered: Hospital Admissions, Medicare

Outcome: Very Favorable

Issue

The issue in this case was whether the Medicare Program had properly classified certain patients who were hospitalized for more than one day as “outpatients” or on “observational status,” rather than as “inpatients,” because those patients had not been formally admitted in their hospitals.

AMA Interest

The AMA believes that physicians should make admission determinations based on medical necessity rather than financial considerations.

Case Summary

The plaintiffs in this lawsuit, all of whom were Medicare beneficiaries, had been hospitalized for more than one day – most had been hospitalized for several days. The plaintiffs had been denied Medicare Part A benefits, which are only available to hospital inpatients. Although the plaintiffs received the full range of medical and hospital services available to inpatients, Medicare said they should be deemed on observational status because they had not been formally admitted. Two of the plaintiffs actually had been formally admitted, but their hospitals’ utilization review committees had retrospectively rescinded the admission decisions. By virtue of their disqualification from Medicare Part A benefits, the plaintiffs incurred significant out-of-pocket health care expenses.

Several Medicare beneficiaries sued the Secretary of the Department of Health and Human Services (HHS) in the United States District Court for the District of Connecticut. The case sought to compel the Centers for Medicare & Medicaid Services (CMS) to revise its policies regarding outpatient/inpatient/observation status. Numerous legal theories were raised, including a claim that CMS had violated the Fifth Amendment Due Process Clause.

The plaintiffs contended that CMS imposed financial penalties on hospitals which categorize patients as inpatients, if a subsequent audit indicates that only outpatient status was justified. In such event, the hospitals receive nothing. Therefore, hospitals have been incentivized to mischaracterize observation status. Moreover, physicians may be pressured to sign orders, provided by hospitals and based on proprietary systems developed by, which may then be used retrospectively to determine if an admission was appropriate.

HHS moved to dismiss the complaint for lack of jurisdiction and failure to state a cause of action. The trial court found that it did have jurisdiction over the claims, even as to those plaintiffs who had failed to exhaust their administrative remedies. It found that HHS could have waived the exhaustion requirement, and its failure to do so was “inappropriate.” Therefore, the court would deem the exhaustion requirement to have been waived.

However, the trial court agreed with HHS that the plaintiffs had not stated a cause of action. As to the Due Process claim, the court held that inpatient status is a discretionary decision of hospitals and physicians. Because of that discretion, the plaintiffs did not have a vested property interest in their inpatient status. Having determined that the plaintiffs lacked a property interest in their characterization as inpatients, the court did not reach the other elements of the Due Process claim. The court ordered all claims dismissed and entered judgment for HHS.

The plaintiffs appealed to the Second Circuit, which reversed on the Due Process issue. The court found that, potentially, the plaintiffs could have a property interest in their status as inpatients. The case was remanded for consideration of whether HHS had violated the plaintiffs’ constitutional rights.

Litigation Center Involvement

The Litigation Center, along with the Connecticut State Medical Society and several specialty medical societies filed an amicus brief in support of the plaintiffs and urging reversal. The brief argued that the plaintiffs had alleged a constitutionally protectable interest in their right to be deemed inpatients.

United States Court of Appeals for the Second Circuit brief