

# PUBLICATION

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## Wage Index Reclassification Rule Struck Down by Second Circuit [Ober|Kaler]

March 03, 2016

On February 4, 2016, the United States Court of Appeals for the Second Circuit decided *Lawrence + Memorial Hospital v. Burwell*. The case addressed a regulation, issued by the Secretary of Health and Human Services (Secretary), which limited the ability of hospitals to be classified as "rural" for one purpose and "urban" for a different purpose.

Hospitals are generally classified as "rural" or "urban" based initially on their geographic location. Being classified as "rural" or "urban" may impact the reimbursement a hospital receives under Medicare. To avoid inequities that result from classifications based solely on geography, the Medicare statute allows hospitals to be reclassified as "rural" for some purposes and "urban" for others. For example, under the Medicare statute, a hospital classified "as 'rural' in order to obtain favorable drug pricing [42 U.S.C. § 1395ww(d)(8)(E)] can contemporaneously apply to be designated to an urban area for wage reimbursement purposes [42 U.S.C. § 1395ww(d)(10)]." *Lawrence*, slip op. at 3. This bifurcated status permits hospitals to be "urban" for purposes of retaining and compensating qualified staff, but "rural" to receive lower drug pricing.

Despite those statutory allowances, the Secretary promulgated the reclassification rule, 42 C.F.R. § 412.230(a)(5)(iii), which prohibited a hospital that had been reclassified from "urban" to "rural" to obtain favorable drug pricing from being reclassified again as "urban" for wage reimbursement purposes. The Court rejected the Secretary's argument that the agency could "fill the gap" because 42 U.S.C. § 1395 (d)(8)(E) did not speak to the interplay between reclassification under the two provisions, finding it to be unpersuasive. Relying on a *Chevron* analysis, the Second Circuit held that the reclassification rule "contravenes the plain language of the statute" which permits both classifications, and thereby "exceeds the Secretary's authority." As such, the Second Circuit held the rule invalid.

### Ober|Kaler's Comments

This decision is the rare case when there is no deference given the Secretary in the interpretation of the Medicare regulations because it violates the plain language of the statute. The ruling reopens the door for urban hospitals to seek reclassification as rural to obtain benefits accorded to rural hospitals under 42 U.S.C. § 1395ww(d)(8)(E), as well as further reclassification as urban for wage index purposes to receive higher payments. The ruling is only controlling in the Second Circuit (New York, Connecticut and Vermont). Although it is unlikely this case will be appealed to the United States Supreme Court, it is likely that the Secretary will challenge any similar ruling in a court outside the Second Circuit.