

PUBLICATION

Court Upholds CMS Treatment of Multi-Campus Hospitals as Single Entities for Wage Index Purposes [Ober|Kaler]

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The United States Court of Appeals for the District of Columbia recently upheld the decision of the Secretary of Health and Human Services (Secretary) that a multi-campus hospital straddling two geographic areas should be treated as a single entity for purposes of establishing wage indices. *Anna Jacques Hospital, et al., v. Burwell*, No. 14-05125, Aug. 14, 2015 [PDF].

The hospital at issue operated under a single provider number but had multiple campuses located in two geographical areas. CMS treated the wages of all of the hospital's employees as located within the single geographical area where the main campus was located, for purposes of calculating the wage index of that geographical area. Hospitals located within the geographical area of the main campus of the multi-campus hospital filed the appeal because their wage index included all the wages from all locations of the multi-campus, including those in other geographical areas with lower wages, thereby decreasing the wage index in the geographical area in which the main campus of the hospital and the suing hospitals were located.

The hospitals argued that the Secretary's calculation should be struck down, because there was a better method of calculating the area's wage index which excluded the wage data from the hospital locations physically outside their area. The court, however, disagreed. It found that the statute expressly afforded the Secretary flexibility and discretion in compiling data and calculating the wage index. The court further ruled that the Secretary's calculation complied with the statutory requirement that the wage index reflect wage costs in the geographical area of the hospital, which does not require scientific exactitude. The court concluded that the Secretary acted reasonably in its rule and, therefore, its rule could not be overturned.

Ober|Kaler's Comments

This decision exemplifies the great latitude the Secretary is given where the rules addressing an issue are not established with particularity in the applicable statute. This is true in the wage index arena for multi-campus hospitals. In order to overturn the Secretary's action in a wage index or other case, the provider must prove that the Secretary acted contrary to the applicable statute, regulation, or other rule, or that the Secretary acted arbitrarily or capriciously. This significantly tips the scales in favor of the Secretary. Providers seeking to overturn actions of the Secretary must plan from the first stages of their appeal to establish that the Secretary acted contrary to the applicable rule and/or acted arbitrarily or capriciously.