

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

NORTHWESTERN MEMORIAL HOSPITAL
251 East Huron Street
Chicago, Il 60611

and

MICHIGAN MEDICINE
d/b/a University of Michigan Hospitals & Health
Centers
1500 E. Medical Center Dr.
Ann Arbor, MI 48109

and

MILTON S. HERSHEY MEDICAL CENTER
500 University Dr.
Hershey, PA 17033

and

UH CLEVELAND MEDICAL CENTER
3605 Warrensville Center Rd.
Shaker Heights, OH 44122

and

UH REGIONAL HOSPITALS
d/b/a UH Richmond Heights Hospital
27100 Chardon Road
Richmond Heights, OH 44143

Plaintiffs,

vs.

XAVIER BECERRA
Secretary of the United States Department of
Health and Human Services
200 Independence Ave., S.W.
Washington, DC 20201

Defendant.

Case No. 1:22-cv-313

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND SUMS DUE
UNDER THE MEDICARE ACT**

INTRODUCTION

1. This is a civil action brought to obtain judicial review of agency decisions regarding Medicare reimbursements rendered by Xavier Becerra (the “Secretary” or “Defendant”) in his official capacity as the Secretary of the United States Department of Health and Human Services. Plaintiffs are hospitals that participate in the Medicare program and qualify for direct graduate medical education (“DGME”) payments for training medical residents. Plaintiffs seek an order setting aside the Secretary’s regulation at 42 C.F.R. § 413.79(c)(2)(iii), which unlawfully reduces Plaintiffs’ DGME payments by decreasing the number of residents that Plaintiffs may claim during a fiscal year.

2. Plaintiffs operate approved medical training programs for physician interns, residents, and fellows (collectively, “residents”). Plaintiffs receive Medicare DGME payments, which are calculated, in part, based on the number of full-time equivalent (“FTE”) residents that train at each hospital. If a resident’s training time exceeds the number of years designated as the “initial residency period” (“IRP”), the resident’s time is weighted at 0.5, which means that the hospital may only count one-half of the resident’s time that exceeds the IRP. Also, the number of FTEs that a hospital may claim for payment in any given year is generally capped at the number of *unweighted* FTEs that it trained in its 1996 fiscal year.

3. The regulation at 42 C.F.R. § 413.79(c)(2)(iii) is contrary to the Medicare statute because it calculates a hospital’s DGME payments using a weighted FTE cap rather than an unweighted FTE cap. 42 U.S.C. § 1395ww(h)(4)(F). The effect of the unlawful regulation is to impose on Plaintiffs a weighting factor on residents that are within their IRP or, viewed

differently, results in a reduction of greater than 0.5 for many residents who are beyond the IRP, which prevents Plaintiffs from claiming DGME reimbursement up to their full FTE caps authorized by statute. Thus, the calculations of the current-year, prior-year, and penultimate-year weighted DGME FTEs (all three of which are elements of a hospital's DGME calculation in a given year) and the FTE caps are contrary to the statutory provision at 42 U.S.C. § 1395ww(h), and, as a result, Plaintiffs' DGME payments are unlawfully understated.

4. The Secretary's application of this regulation violates the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (the "APA"), and is contrary to the Medicare statute, 42 U.S.C. § 1395ww(h). Accordingly, Plaintiffs asks this Court to reverse the Secretary's decisions and to order the Secretary to recalculate Plaintiffs' DGME payments as required by statute.

JURISDICTION AND VENUE

5. This action arises under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.* (the "Medicare statute"), which establishes the Medicare program, and the APA.

6. This Court has jurisdiction under 42 U.S.C. § 1395oo(f)(1), which grants Medicare providers the right to obtain expedited judicial review ("EJR") of any action involving "a question of law or regulations relevant to the matters in controversy" when the Secretary's Provider Reimbursement Review Board (the "Board") "determines . . . that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received." The Board granted EJR to Plaintiffs in decisions dated December 9, 2021, December 14, 2021, December 30, 2021, January 3, 2022, and January 31, 2022. Exhibits 1–5. Accordingly, this action is timely filed within the sixty-day limitations period established at 42 U.S.C. § 1395oo(f)(1).

7. Venue in this Court is proper under 42 U.S.C. § 1395oo(f)(1).

PARTIES

8. Plaintiff Northwestern Memorial Hospital (“NMH”) is an academic medical center located in Chicago, Illinois. NMH participates in the Medicare program and has been assigned Medicare Provider Number 14-0281. NMH operates graduate medical education programs and receives Medicare DGME payments. NMH contests the Medicare reimbursement decisions for its fiscal years ending December 31, 2015 and December 31, 2019.

9. Plaintiff Michigan Medicine is an academic medical center located in Ann Arbor, Michigan. Michigan Medicine participates in the Medicare program and has been assigned Medicare Provider Number 23-0046. Michigan Medicine operates graduate medical education programs and receives Medicare DGME payments. Michigan Medicine contests the Medicare reimbursement decision for its fiscal year ending June 30, 2015.

10. Plaintiff Milton S. Hershey Medical Center (“MSHMC”) is an academic medical center located in Hershey, Pennsylvania. MSHMC participates in the Medicare program and has been assigned Medicare Provider Number 39-0256. MSHMC operates graduate medical education programs and receives Medicare DGME payments. MSHMC contests the Medicare reimbursement decision for its fiscal year ending June 30, 2018.

11. Plaintiff UH Cleveland Medical Center is an academic medical center located in Shaker Heights, Ohio. UH Cleveland Medical Center participates in the Medicare program and has been assigned Medicare Provider Number 36-0137. UH Cleveland Medical Center operates graduate medical education programs and receives Medicare DGME payments. UH Cleveland Medical Center contests the Medicare reimbursement decisions for its fiscal years ending December 31, 2018 and December 31, 2019.

12. Plaintiff UH Regional Hospitals, d/b/a UH Richmond Heights Hospital, is an academic medical center located in Richmond Heights, Ohio. UH Richmond Medical Center participates in the Medicare program and has been assigned Medicare Provider Number 36-0075. UH Richmond Medical Center operates graduate medical education programs and receives Medicare DGME payments. UH Richmond Medical Center contests the Medicare reimbursement decisions for its fiscal years ending December 31, 2018 and December 31, 2019.

13. Defendant Xavier Becerra is the Secretary of the United States Department of Health and Human Services and is the federal officer responsible for administering the Medicare program pursuant to the Social Security Act. Defendant is sued in his official capacity.

BACKGROUND

I. The Medicare Program and Payment for Hospital Services

14. Medicare is a public health insurance program that generally furnishes health benefits to participating individuals once they reach the age of 65. 42 U.S.C. § 1395c. The Secretary has delegated much of the responsibility for administering the Medicare program to the Centers for Medicare and Medicaid Services (“CMS”), which is a component of the United States Department of Health and Human Services.

15. Under the Medicare statute, an eligible Medicare beneficiary is entitled to have payment made by Medicare on his or her behalf for, *inter alia*, inpatient and outpatient hospital services provided by a hospital participating in the Medicare program as a provider of health care services. *Id.* The Medicare program consists of four Parts: A, B, C, and D. Inpatient hospital services are paid under Part A of the Medicare statute. *Id.* § 1395d. Physician, hospital outpatient, and certain other services are paid under Medicare Part B. *Id.* § 1395k. Medicare Part C is an optional managed care program that pays for services that would otherwise be

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