

A federal district court issued a Memorandum of Decision dated March 24, 2020 (*Alexander v. Azar*, Case No. 3:11-cv-1703-MPS, -- F. Supp. 3d --, 2020 WL 1430089 (D. Conn. Mar. 24, 2020), *appeal pending*, No. 20-1642 (2d Cir.)) and entered a Judgment dated March 26, 2020 in a class action seeking certain appeal rights for Medicare beneficiaries who receive observation services as outpatients. In its Memorandum of Decision, the court adopted the following modified class definition:

All Medicare beneficiaries who, on or after January 1, 2009: (1) have been or will have been formally admitted as a hospital inpatient, (2) have been or will have been subsequently reclassified as an outpatient receiving “observation services”; (3) have received or will have received an initial determination or Medicare Outpatient Observation Notice (MOON) indicating that the observation services are not covered under Medicare Part A; and (4) either (a) were not enrolled in Part B coverage at the time of their hospitalization; or (b) stayed at the hospital for three or more consecutive days but were designated as inpatients for fewer than three days, unless more than 30 days has passed after the hospital stay without the beneficiary’s having been admitted to a skilled nursing facility. Medicare beneficiaries who meet the requirements of the foregoing sentence but who pursued an administrative appeal and received a final decision of the Secretary before September 4, 2011, are excluded from this definition.

The court’s March 26, 2020 Judgment ordered:

1. The Secretary shall permit all members of the modified class defined in the March 24, 2020 Memorandum of Decision to appeal the denial of their Part A coverage.
2. For class members who have stayed, or will have stayed, at the hospital for three or more consecutive days, but who were designated as inpatients for fewer than three days, the Secretary shall permit appeals through an expedited appeal process substantially similar to the existing expedited process for challenging hospital discharges.
3. In the appeals to be established under this order, the Secretary shall permit class members to argue that their inpatient admission satisfied the relevant criteria for Part A coverage—for example, that the medical record supported a reasonable expectation of a medically necessary two-midnight stay at the time of the physician’s initial inpatient order, in the case of a post–Two Midnight Rule hospital stay—and that the URC’s determination to the contrary was therefore erroneous. If the class member prevails, the Secretary shall disregard, for the purposes of determining Part A benefits, including both Part A hospital coverage and Part A SNF coverage, the beneficiary’s reclassification as an outpatient that resulted from the URC’s erroneous determination.
4. The Secretary shall provide class members with timely notice of the procedural rights described above.

5. For those class members whose due process rights were violated, or will have been violated, prior to the availability of the procedural protections set forth above, the Secretary shall provide a meaningful opportunity to appeal the denial of their Part A coverage, as well as effective notice of this right.
6. The Secretary may provide greater procedural protections than the ones described above, and may provide these protections to a broader class of beneficiaries, provided that the due process rights of the class members are fully protected as set forth above.

The government has appealed the district court's judgment, and will post further updates as appropriate if and when there are new developments.