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Sixth Circuit Narrowly Rejects Narrow View of Medicare's Limitation on Liability

Key Takeaways

- The Sixth Circuit issued a significant decision clarifying that a provider's knowledge of Medicare coverage guidance does not, by itself, defeat the limitation on liability provision under Section 1879 of the Social Security Act.[1] Instead, the question is whether the provider reasonably and in good faith interpreted that guidance as covering the services at issue. [2]
- The Sixth Circuit emphasized that coverage and financial liability are separate inquiries. A retroactive determination that Medicare did not cover services does not automatically make the provider liable for an overpayment if the provider did not know, and could not reasonably have been expected to know, the services were not covered.
- The Sixth Circuit explained that the ultimate statutory question is whether the provider reasonably interpreted and applied the guidance to each particular denied claim.
- While prior cases from various courts have examined an administrative body's application of the limitation on liability provision,[3] this case appears to be the first U.S. Court of Appeals decision to propose that mere knowledge of an LCD does not, standing alone, establish knowledge of noncoverage, a principle that may help Medicare providers beyond hospice where coverage depends on complex, fact-intensive medical decision-making or clear Medicare guidance is lacking.

On July 27, the Sixth Circuit issued a significant decision for Medicare providers, addressing for the first time a practical question that can arise after a retrospective coverage denial: if a provider reasonably believed the item or service it provided met Medicare coverage criteria, and CMS originally reimbursed the provider for the item or service, is the provider entitled to keep the payment under the Social Security Act's limitation on liability provision? In *In Home Health, LLC v. Kennedy*, the court said not necessarily. Applying the limitation on liability provision in Section 1879 of the Social Security Act, 42 U.S.C. § 1395pp, the court held that a provider's knowledge of Medicare coverage guidance, standing alone, does not establish repayment liability. Rather, the provider may still be entitled to payment under the limitation on liability provision if its interpretation of the applicable coverage guidance was reasonable under the circumstances and if the provider did not know nor reasonably should have known that the

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claims were not covered. Such an analysis is fact-intensive and largely determined by the complexity of the coverage guidance, the type of notice CMS provided and the information available in the medical record.

The Sixth Circuit Separates Coverage from Liability

The dispute began when a Medicare contractor sought to recover nearly $1 million from In Home Health for hospice claims. After several rounds of administrative review, 104 claims involving four patients remained at issue. The administrative law judge (ALJ) upheld the denial of those claims, finding In Home Health financially liable because, as a Medicare provider, it was expected to know the applicable CMS guidance and documentation requirements. The Sixth Circuit held that substantial evidence supported the ALJ's coverage determination but concluded that the ALJ stopped the liability analysis too soon. The fact that In Home Health knew the applicable Medicare guidance existed did not necessarily mean that it should have known Medicare would deny the particular claims at issue. The court therefore vacated the liability determination and remanded for the ALJ to assess whether In Home Health could reasonably and in good faith have interpreted that guidance as covering the services at issue.

Beyond Hospice: Where Section 1879 May Apply

Although *In Home Health* arose in the hospice context, Section 1879 is not limited to hospice providers. The statute applies to certain Medicare Part A services and assigned Part B claims that were denied as not reasonable and necessary.

The decision may therefore have implications beyond hospice. For example, home health agencies may face denials based on whether a beneficiary was homebound or required intermittent skilled nursing care, while skilled nursing facilities may face disputes over whether care was skilled or custodial. Section 1879 may also apply to certain assigned Part B claims denied as not reasonable and necessary. In each setting, the strength of the argument will depend on the particular coverage requirements and whether the provider could reasonably have been expected to know that Medicare would not pay.

The broader principle from *In Home Health* is that the mere existence of Medicare guidance on the requirements for coverage of an item or service does not extinguish a provider's argument that it reasonably believed coverage requirements were met. Where the applicable guidance is complex, fact-intensive, or leaves room for reasonable clinical judgment, a provider may have a meaningful limitation on liability argument even if Medicare ultimately denies coverage.

Implications for Providers

The decision may be particularly useful in Medicare claim reviews and appeals where coverage depends on the application of clinical criteria to individual patients. Providers facing post-payment audits or overpayment demands should consider the limitation on liability argument separately from the underlying coverage determination rather than assuming that an adverse coverage decision resolves both issues.

At the ALJ level, that means developing the record around what the provider reasonably understood at the time the services were furnished. Contemporaneous medical records and clinical notes can help demonstrate the basis for the provider's application of Medicare's coverage requirements. Where appropriate, expert testimony may also help establish that the provider's interpretation of complex or fact-intensive guidance was reasonable.

For questions about the Sixth Circuit's decision, Medicare claim reviews, overpayment

appeals, Section 1879 limitation on liability arguments or related provider reimbursement issues, please contact Michael Gennett, Evan Schrode, Gulnara Anzarova or your regular Polsinelli attorney.

[1] Codified at 42 U.S.C. § 1395pp.

[2] *In Home Health, LLC v. Kennedy*, No. 25-3542, slip op. at 11 (6th Cir. July 27, 2026) (referring to Section 1879's limitation on liability provision as a "safe harbor").

[3] *See Caring Hearts Pers. Home Servs., Inc. v. Burwell*, 824 F.3d 968 (10th Cir. 2016); Vitreo Retinal Consultants of the Palm Beaches, P.A. v. U.S. Dep't of Health & Hum. Servs., 649 F. App'x 684, 697 (11th Cir. 2016); *Maximum Comfort, Inc. v. Secy' of Health and Hum. Serv.,* 512 F.3d 1081, 1088–89 (9th Cir. 2007); *Cap. Hospice v. Kennedy*, No. 1:23-CV-1741 (RDA/LRV), 2025 WL 961672 (E.D. Va. Mar. 31, 2025); *Hospice of E. Tex. v. Sec'y, U.S. Dep't of Health & Hum. Servs.*, No. 5:23-CV-136-RWS-JBB, 2025 WL 957519 (E.D. Tex. Mar. 31, 2025).