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Supreme Court Rules Against HHS's Lowering of Reimbursements to Hospitals, in NCLA Amicus Win

American Hospital Association, et al. v. Xavier Becerra, et al.

Washington, DC (June 15, 2022) – Today, a unanimous Supreme Court ruled that the Department of Health and Human Services (HHS) violated the 2003 Medicare Act by lowering drug reimbursement rates for specific hospitals. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an *amicus* brief in support of petitioners in *American Hospital Association v. Becerra*. NCLA agreed with the petitioners' argument that HHS's authority under the Medicare statute to "adjust[ ]" average sales price when calculating reimbursement rates does not include wholesale authority to substitute acquisition costs for average sales price.

Dodging the *Chevron* deference issue entirely, the opinion held that HHS plainly violated the Medicare statute by authorizing different reimbursement rates for hospitals based on "the hospital group" involved. The statute authorizes HHS to vary reimbursement rates based on the hospital only if it first conducts a survey and concludes that some hospital groups have lower acquisition costs for some drugs than do other hospital groups, but HHS never conducted such a survey. HHS nonetheless concluded that Section 340B hospitals were paying considerably less for drugs than other hospitals, leading the agency to mandate lower reimbursement rates for that one type of hospital. HHS changed the methodology used to calculate reimbursements, and it lowered the reimbursement rate for the hospitals participating in the 340B Drug Pricing Program. The district court granted the hospitals' motion for a permanent injunction against HHS, but a divided D.C. Circuit panel reversed the ruling, holding that HHS's decision "rests on a reasonable interpretation of the Medicare statute."

Writing for the Court, Justice Brett Kavanaugh stated, "The statute expressly authorizes HHS to vary rates by hospital group if HHS has conducted such a survey. But the statute does not authorize such a variance in rates if HHS has not conducted a survey." The Court further ruled that the Medicare statute requires reimbursement rates to be set "drug by drug, not hospital by hospital or hospital group by hospital group."

NCLA had also argued in its *amicus curiae* brief that the U.S. Court of Appeals for the District of Columbia Circuit improperly applied *Chevron* deference to HHS's interpretation of the Medicare statute covering the setting of reimbursement rates. Disappointingly, likely because "the text and structure of the statute make this a straightforward case," the Supreme Court did not address the *Chevron* deference concerns NCLA raised.

NCLA released the following statements:

"NCLA urged the Court to overrule *Chevron* deference—to hold that Courts should stop deferring to a federal agency's interpretation of a statute simply because the statute's meaning isn't absolutely clear. But the Court had no need to address *Chevron* deference in order to rule against Medicare bureaucrats. It held that the government's interpretation of the Medicare statute was so obviously wrong—the Court *unanimously* rejected that interpretation—that there was no need to consider whether courts should ever be deferring to government interpretations in close cases."
— **Rich Samp, Senior Litigation Counsel, NCLA**

"Yet again the U.S. Supreme Court has dodged revisiting its abhorrent *Chevron* precedent. While NCLA agrees with the substance of today's decision, we know all too well that misguided statutory interpretations—like the one invoking *Chevron* deference adopted by the District of Columbia Circuit below—will continue to crop up in federal courts of appeals unless and until the U.S. Supreme Court puts *Chevron* out of its misery."
— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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