JUNE 23, 2022

Supreme Court Upholds ERISA Plan Design for Dialysis Coverage

The Supreme Court released an opinion Tuesday, June 21, 2022, holding that the Marietta Memorial Hospital Employee Health Benefit Plan ("Marietta Plan") did not violate the Medicare Secondary Payer statute merely because it applied a reimbursement limitation to the dialysis benefits that were otherwise covered by the plan.

The Medicare Secondary Payer statute provides that a plan "may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner" or "take into account that an individual is entitled to or eligible for" Medicare due to end stage renal disease. The Sixth Circuit had held that this language precluded rules that were facially neutral but that had a disparate impact on persons with end stage renal disease.

However, the court characterized the statute as "a coordination-of-benefits statute, not a traditional antidiscrimination statute". The court noted that because one way that participants can qualify for Medicare is by having end stage renal disease, which generally requires dialysis, Congress was concerned that employers would circumvent Medicare's secondary payor status by discriminating against those who have end stage renal disease. In light of that congressional purpose, the court held that the statute does not require that dialysis benefits be provided at all or that they be provided without restrictions if covered at all. Instead, the court held that the statute requires only that any restrictions that apply must apply equally to those who have end stage renal disease and to those who do not.

Indirect Impact on "Settlor" Functions

The Marietta Plan treated all dialysis providers as out-of-network and reimbursed them at the same out-of-network rate. But, the court held that it did not discriminate between plan participants as all participants were treated the same. In so doing, the court indirectly strengthened the long-standing line of cases treating ERISA plan design as a "settlor" function. Meaning that plan sponsors are free to design their plans as long as the design treats every participant the same.

A question remains, however, whether this decision will have any impact on the line of cases brought by out-of-network providers against ERISA plans. Typically, one of the arguments in those cases is that the low reimbursement rates and UCR limitations for out-of-network providers is somehow "unfair" and violates ERISA. To date, the response to these arguments by plan sponsors is that all plan participants are treated the same and that plan design is a settlor function allowing for such a design. For now, it appears DaVita should strengthen these arguments made by ERISA plans.