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Husch Blackwell Secures Key Sixth Circuit Victory, Establishing Important Medicare Reimbursement Precedent for Hospice Providers

A Husch Blackwell appellate team secured a favorable decision from the U.S. Court of Appeals for the Sixth Circuit on behalf of In Home Health in a closely watched Medicare reimbursement case with significant implications for the hospice industry—and, indeed, all healthcare providers.

The case centered on Medicare reimbursement for hospice services and the regulatory requirements providers must satisfy to receive payment. Hospice providers are routinely subject to post-payment audits, which can result in reimbursement adjustments and lengthy administrative appeals. After exhausting the administrative appeals process, In Home Health challenged an adverse reimbursement determination in federal district court, where it was unsuccessful.

But the Sixth Circuit vacated the lower court's decision, agreeing with Husch Blackwell's arguments. In particular, the Circuit adopted a provider-friendly interpretation of Medicare's "safe harbor" (or "limitation of liability") provision. Going forward, providers will receive Medicare reimbursement so long as they reasonably interpret regulatory requirements as applied to particular patients. As the Court summarized, "if a provider reasonably—albeit incorrectly—interpreted the Medicare notices and standards as covering a patient's claim, then the safe harbor saves them from liability."

Because the "safe harbor" provision applies to all Medicare participants, the ruling applies to most healthcare providers. But it is especially important for the hospice industry, where practice standards often give rise to reasonable differences of opinion even among qualified physicians. This case marks the

first time a federal court of appeals has addressed hospice reimbursement under the Medicare Act. Its significance attracted support from the hospice industry's leading national association, which filed an amicus brief in support of In Home Health.

The ruling also carries broader implications for ongoing litigation involving hospice reimbursement. Husch Blackwell currently represents hospice providers in dozens of similar matters pending in administrative proceedings and district courts across the country. The Sixth Circuit's provider-friendly precedent may increase the likelihood of success in other pending and future cases.

The Husch Blackwell appellate team was led by partners Joseph Diedrich and Bryan Nowicki and included attorneys Tessa Carberry, Zaina Niles, Emily Solum, and Emily Loftis.