



Inside Counsel :Regulatory: When is a permanent injunction not permanent?

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For more than 30 years, Medicare has kept the payments it makes to individual physicians confidential based upon a permanent injunction that was entered in 1979 by the Middle District of Florida in *Florida Medical Ass'n, Inc. v. Dep't of Health, Education and Welfare*.

In the case, the American Medical Association and the Florida Medical Association (FMA) were co-plaintiffs and successfully obtained a permanent injunction preventing the release of physician-specific Medicare payment data. The Department of Health and Human Services (HHS) has relied upon the FMA Injunction as a basis to deny Freedom of Information Act (FOIA) requests for such data since that time.

Interestingly however, after years of perpetuating expensive litigation seeking permanent, nationwide enforcement of the FMA Injunction, HHS reversed its position and argued in favor of vacating the FMA Injunction, declaring that the injunction was essentially invalidated by changes in the law dating back to 1982. On May 31, U.S. District Judge Marcia Morales Howard entered an order granting Rule 60(b)(5) relief and vacated the FMA Injunction. Judge Howard essentially ruled that the physician's privacy concerns no longer outweigh the public interest in obtaining Medicare payment data.

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