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Ruling may unlock key data on doctors

An order to release Medicare files might help patients choose physicians. Medical experts say the records don't tell the whole story.

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WASHINGTON — Whether it's a hernia repair or heart bypass, doctors with a lot of experience performing a given operation tend to have better results. The problem for patients in choosing a physician has been finding out which ones have the know-how.

Now a court ruling appears to open the way for consumer access to such information for the first time, potentially transforming the relationship between doctors and patients, as well as the business of healthcare.

In a little-noticed decision last week, a federal judge in Washington, D.C., ruled in favor of a consumer group that sued the Health and Human Services Department to allow disclosure of specific data about doctors from the Medicare claims database.

U.S. District Judge Emmet G. Sullivan concluded that releasing the data would be "a significant public benefit," and ordered the department to turn it over by Sept. 21.

With information on more than 40 million patients and 700,000 doctors, the Medicare database is far richer than any private insurer's. Though it does not have information on some doctors, such as pediatricians, who don't treat Medicare patients, it is considered the mother lode for data on those who treat adults, because Medicare recipients are a mainstay of most practices.

The database's usefulness has been limited by a decades-old government policy that protects the privacy of doctors, who fear the information could be used to micromanage the practice of medicine. But as the cost of medical care has skyrocketed, employers, insurers and consumer groups have pressured the government to open up Medicare's files on individual doctors.

Those files could reveal far more than how many times a year a surgeon performs a hip replacement operation. The data could also be analyzed to determine how a doctor makes crucial decisions on tests and procedures that determine both quality and costs. They would show which doctors fail to order prudent preventive tests. And they could indicate which ones order duplicative tests or unnecessary hospitalizations.

"These data will make it possible to develop measures that will be very helpful to consumers," said Robert Krughoff, president of Consumers' Checkbook, the nonprofit

group that sued for the information.

"Someone who is thinking they need a knee replacement -- or a prostatectomy -- will be able to go on our website and see how many of these procedures their physician has done for Medicare patients," he added.

His organization -- which compiles ratings of a wide range of service providers -- sells its information to individual subscribers. But Krughoff said it intended to make the Medicare data available free of charge.

The lawsuit did not seek any identifying information on patients.

Some business groups said the ruling could be a turning point in the quest for the elusive balance between costs and quality, setting a precedent for the release of more detailed data.

"We're very excited that the court has ruled in this direction," said Helen Darling, president of the National Business Group on Health, which represents big companies. "Large employers have been trying to make information available on performance to consumers and to those who make purchasing decisions on which providers might be in a preferred network."

The Department of Health and Human Services has not decided whether to appeal the ruling. "We're in the process of reviewing the court's decision and evaluating our response," spokeswoman Christina Pearson said.

An appeal could be politically embarrassing for the administration, because President Bush and Health and Human Services Secretary Mike Leavitt have both campaigned for greater openness and consumer empowerment in healthcare.

"Not supporting this ruling would certainly be inconsistent with administration initiatives that favor price and quality transparency in healthcare," said Paul Ginsburg, president of the Center for Studying Health System Change, a research group. "This represents transparency on the quality side."

Moreover, support for opening up the Medicare database is building in Congress. Two unlikely allies, Sen. Hillary Rodham Clinton (D-N.Y.) and Sen. Judd Gregg (R-N.H.), a conservative budget hawk, introduced legislation in June to make the data available to research organizations around the country. Under current policies, researchers who use Medicare information cannot identify individual doctors.

In the past, the American Medical Assn. has voiced strong reservations about releasing the Medicare files. Spokeswoman Katherine Hatwell said the organization was closely reviewing the ruling and its implications.

Doctors are worried that Medicare files do not account for the severity of the cases that individual physicians may handle. Medicare files might show a higher-than-average number of patient deaths for a particular doctor's office. But that could be because the physician takes on the sickest patients.

As for the issue of how frequently doctors perform a given medical procedure, they point out there's a first time for every physician.

"Physicians are concerned that they will look bad, not because of their own shortcomings, but because their patients are difficult," Ginsburg said. "There are issues about using this type of information responsibly, and not using it unless you can do some significant adjustment for the difference in patients."

Krughoff acknowledges that such issues will have to be resolved as the use of the Medicare data becomes more sophisticated.

In the lawsuit, Consumers' Checkbook sought access to data on procedures performed by doctors in Washington, D.C., Illinois, Maryland, Virginia and Washington state. But Krughoff said the group has filed a Freedom of Information Act request for the same information from the remaining states.

"I think there's no question but that the judge's decision settles the matter," he said. "They'll have to give us all 50 states."

He estimated it would take a month or two after receiving the information to post it online.

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