



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

---

## Nurses Sue Over Medicare Pay Policy On Pain Management

By **Jeff Overley**

Law360, New York (April 12, 2017, 6:21 PM EDT) -- A new Medicare policy denying reimbursement to nurses for providing chronic pain management flies in the face of federal regulations and was enacted unconstitutionally, according to a lawsuit filed by the American Association of Nurse Anesthetists on Tuesday in Illinois federal court.

The lawsuit filed by the 50,000-member AANA applies to a so-called local coverage determination made by a Medicare contractor called Novitas Solutions Inc., which oversees payments in 11 states and the District of Columbia. The LCD is set to take effect on May 4 and would cut off reimbursement for chronic pain management provided by certified registered nurse anesthetists, according to the suit.

That outcome would mean that nurse anesthetists who "have built entire practices around treating patients with chronic pain will be foreclosed from meaningful participation in Medicare," the AANA's suit said.

Novitas is one of several regional contractors authorized to set Medicare payment policies that are limited to certain geographic areas. The policies describe conditions under which services are "reasonable and necessary" and therefore reimbursable.

According to Tuesday's lawsuit, Novitas created several new training requirements that must be satisfied by health care providers in order for epidural shots to qualify for reimbursement. However, there are no training programs that exist for nonphysicians to meet the requirements, and so the local coverage determination "provides a path for [nurse anesthetists] that leads nowhere," the suit alleged.

The complaint argues that Novitas' action conflicts with a regulation issued in 2012 by the Centers for Medicare and Medicaid Services. The regulation explained when "anesthesia and related care" is eligible for Medicare pay, and concluded that it applies to "services that a certified registered nurse anesthetist is legally authorized to perform in the state in which the services are furnished."

"Novitas ... exceeds its authority by seeking to change a substantive legal standard, a power reserved only for CMS and the proper rulemaking procedures set forth in the [Administrative Procedure Act]," according to the complaint.

The AANA alleges violations of its constitutional right to due process, asserting that its members are about to be improperly deprived of reimbursement without an impartial hearing or appeal. Novitas' action also flouts due process because it is "inconsistent with the federal regulations governing Medicare reimbursement of [nurse anesthetists]," the complaint stated.

Novitas' territory includes D.C., Pennsylvania, New Jersey, Oklahoma, New Mexico, Texas, Arkansas, Louisiana, Maryland, Delaware, Colorado and Mississippi.

Representatives of Novitas couldn't immediately be reached for comment on Wednesday. A spokeswoman for CMS declined to comment.

The plaintiffs are represented by Mark Silberman, Rebecca Dircks and Trevor Illes of Benesch Friedlander Coplan & Aronoff LLP.

Counsel information for the defendants was not immediately available.

The case is American Association of Nurse Anesthetists et al. v. Novitas Solutions, Inc. et al., case number 1:17-cv-02753, in the U.S. District Court for the Northern District of Illinois.

--Editing by Philip Shea.

---

All Content © 2003-2017, Portfolio Media, Inc.