

17-1484 AZAR, SECRETARY OF HEALTH & HUMAN SERVICES V. ALLINA HEALTH SERVICES

DECISION BELOW: 863 F.3d 937

LOWER COURT CASE NUMBER: 16-5255

QUESTION PRESENTED:

The Department of Health and Human Services (HHS) must utilize notice-and-comment rulemaking to promulgate rules, requirements, or statements of policy that "establish[] or change[]" a "substantive legal standard" governing payment for services under the Medicare Act, 42 U.S.C. 1395hh(a)(2). See 42 U.S.C. 1395hh(b)(l). The question presented is:

Whether Section 1395hh(a)(2) requires HHS to conduct notice-and-comment rulemaking before providing instructions to a Medicare Administrative Contractor that makes initial determinations of payments due under Medicare, when those instructions rest on a non--legally-binding administrative interpretation of a relevant statutory provision.

LIMITED TO THE FOLLOWING QUESTION: WHETHER 42 U.S.C. §1395hh(a)(2) or §1395hh(a)(4) REQUIRED THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO CONDUCT NOTICE-AND-COMMENT RULEMAKING BEFORE PROVIDING THE CHALLENGED INSTRUCTIONS TO A MEDICARE ADMINISTRATOR CONTRACTOR MAKING INITIAL DETERMINATIONS OF PAYMENTS DUE UNDER MEDICARE. JUSTICE KAVANAUGH IS RECUSED IN THIS CASE.

CERT. GRANTED 9/27/2018