

Uncertainty regarding legal status of Social Security Institution's Reimbursement Commission

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Introduction

On June 19 2015 the 15th Chamber of the Council of State stayed the execution of the Directive on the Working Principles and Rules of Procedure of the Reimbursement Commission (July 3 2014). However, the Social Security Institute had already repealed the directive approximately two months before the motion to stay its execution was granted and a new directive containing the repealed provisions in their entirety entered into force on April 30 2015.

Accordingly, the 2014 directive (which was the subject of the suspension of execution decision) was not valid from April 30 2015, when the new directive entered into force; thus the suspension of execution decision was not legally binding on the April 30 2015 directive. That is, the subject of the motion to stay the execution had become obsolete.

Although there are no legal obstacles to the 2015 directive governing the Reimbursement Commission's principles and rules of procedure, the Social Security Institute suspended the commission's activities in August 2015.

Background

According to administrative law principles, even if an administrative act is cancelled or its execution is stayed, the relevant administrative authorities can replace the act with an identical legal text and the new regulation will be in force and valid until it is cancelled or its execution is stayed via a court decision. In this respect, the 2015 directive is valid and fully in force, although the legal texts of both directives are identical.

The Social Security Institute considers that as the 2015 directive contains the same legal defects as the 2014 directive, its application will increase the Social Security Institute's legal responsibility in that regard.

The Council of State stayed the execution of the directive due to a procedural discrepancy (ie, the Social Security Institute's failure to obtain the opinions and comments of the Ministry of Health and other ministries while preparing the directive). This discrepancy could have been eliminated by negotiating the problematic issues with the Ministry of Health so that the Reimbursement Committee could continue its work. Alternatively, the Social Security Institute could have published a new directive after having addressed the problematic procedural steps to allow the reimbursement process to continue.

Comment

The uncertainty surrounding the Social Security Institute's approach to the 2015 directive has halted the Reimbursement Commission's work. Since August 2015, the commission has stopped reviewing

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reimbursement application files.

There is no new directive as yet and the 2015 directive is not applied. However, there is a draft for a new Regulation on the Working Principles and Rules of Procedure of the Reimbursement Commission, which was circulated to industry associations for feedback in October 2015 and is waiting to be enacted.

The regulation does not include major changes, but the fact that the new legislation is a regulation rather than a directive suggests that the Social Security Institute wishes to avoid possible procedural discrepancies in the future.

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