

Medicare Cost Report Appeals and CMS Ruling 1498-R

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Overview Of Program

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 - SSI Percentage
 - Exhausted Dual Eligible Days
 - Labor Room Days
- Challenge of the Ruling
 - Expedited Judicial Review (EJR)
 - Appeals Process
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Background

- **"CMS Rulings** are decisions of the Administrator that serve as precedent final opinions or orders or statements of policy or interpretation. They are published under the authority of the Administrator of the Centers for Medicare & Medicaid Services (CMS)." *See* CMS Ruling 1498-R, Page 1.
- **"CMS Rulings** are binding on all CMS components, on all Health & Human Services (HHS) components that adjudicate matters under the jurisdiction of CMS, and on the Social Security Administration (SSA) to the extent that components of the SSA adjudicate matters under the jurisdiction of CMS." *See id.*



Background

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- Issued by the Centers for Medicare and Medicaid Services (CMS) on April 28, 2010.
- Provided Notice to the Provider Reimbursement Review Board (PRRB or Board) that it lacked jurisdiction over provider appeals of three (3) Disproportionate Share Hospital (DSH) issues:
 - Supplemental Security Income Percentage (SSI Percentage),
 - Non-covered inpatient days for patients entitled to Medicare Part A and days where the patient's Part A benefits were Exhausted for discharges before October 1, 2004 (Exhausted Dual Eligible Days) and
 - Labor/Delivery Room inpatient days (Labor Room days) for cost reports beginning prior to October 1, 2009.



Application of the Ruling: SSI

- In *Baystate Medical Center v. Leavitt*, 545 F. Supp. 2d 20, *as amended*, 587 F. Supp. 2d 37, 44 (D.D.C. 2008), the District Court concluded that, in certain respects, CMS did not use the best available data in matching Medicare and SSI eligibility data. *See* CMS Ruling 1498-R, Page 5.
- CMS' proposed Inpatient Prospective Payment System (IPPS) Rule for FFY 2011 proposes to adopt the same revised data matching process as used in *Baystate*, or a new data match process for calculating hospitals' DSH SSI fractions for FFY 2011 and subsequent fiscal years. However, as stated in the Ruling, the data matching process adopted for the IPPS FFY 2011 Rule would apply to properly pending appeals and open cost reports for cost reporting periods beginning prior to October 1, 2010. *See id.*



Application of the Ruling: Exhausted Dual Eligible Days

- The Ruling states that these days are to be included in both the numerator, to the extent the patient was also entitled to SSI, and denominator of the Medicare (SSI) fraction. The Ruling seems to indicate that Medicare + Choice or Part C days will be treated the same way.
- Appeals pending in Federal Courts over the inclusion of these days in Medicare fraction.



Application of the Ruling: Labor Room Days

- Prior to October 1, 2009, Labor Room days furnished to patients who did not occupy a routine bed prior to occupying an ancillary labor and delivery bed before census-taking hour were **not** included as inpatient days for purposes of the DSH calculation.
- The Ruling states that these days are to be included in either the Medicaid or the Medicare fraction of the DSH calculation, as appropriate.



Challenge to the Ruling: EJR

- The Board granted an EJR request as to the validity of Ruling 1498-R.
 - See Southwest Consulting 2004 DSH Dual Eligible Days Group, et al. v. Blue Cross Blue Shield Association/Wisconsin Physician Services/National Government Services-ME, PRRB Dec. No. 2010-D36 (June 14, 2010)
- “EJR is appropriate to determine the validity of those in the Ruling what would, if valid, deprive the Board of jurisdiction and thereby prohibit it for granting EJR as to the validity of other substantive provisions of the Ruling.” *See id.* at 5.
 - Board determined that this was a classic EJR situation with a twist.



Challenge to the Ruling: EJR

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- The Administrator is most likely going to reverse.
 - But the rules are very specific that the Administrator's review is restricted to: Did the Board have Jurisdiction?



Challenge to the Ruling: Appeals Process

- A Provider has appealed the Administrator's reversal of the Board's Decision to include Exhausted Dual Eligible days in the Medicaid fraction of the Provider's DSH calculation.
- The Provider has requested, among other things, an injunction prohibiting CMS from implementing Ruling 1498-R.
- *See The Queen's Medical Center v. Sebelius, Case 1:10-cv-00434-SOM-LEK.*



What Happens Now?

- Guidance from CMS to Medicare Administrative Contractors/Fiscal Intermediaries
- Remands
- More Challenges
- Withdraw of Appeals



About The Speaker

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