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## **SOLE COMMUNITY HOSPITALS (AND SCH WANNABEs) 2006 REBASING ISSUE and CAN YOU GET SOLE?**

### *Probable CMS/Intermediary Error in HSR Calculations*

The Medicare Improvements for Patients and Providers Act of 2008 ("MIPPA") provides that SCHs are eligible for "rebasings" their hospital specific rate ("HSR") using 2006 costs. Currently, SCH – HSRs are based on the greatest of the updated 1982, 1987 or 1996 "base year" costs. If the 2006 HSR is greater, it will apply for cost reporting periods beginning on or after January 1, 2009. In many circumstances, the 2006 HSR may result in significantly enhanced SCH payment rates.

In December, fiscal intermediaries began issuing 2006 HSR calculations for hospitals with December year ends. Subsequent fiscal year end SCH calculations should be issued in the coming months. We believe the intermediaries are incorrectly calculating these HSRs by applying budget neutrality adjustments from 1993-2006 to the update of the 2006 costs to 2007 and forward. This obviously has a negative impact on the 2006 HSR and is clearly incorrect, but appears to follow central office guidance on the subject.

The 2006 HSR intermediary notices we have seen so far do NOT include a notice of the hospital's appeal rights. However, HSR calculations are final determinations eligible for appeal to the PRRB within 180 days through the usual PRRB appeals process. We are working to address this issue with the intermediaries and CMS. However, if no resolution is obtained through these channels, affected SCHs must be sure to appeal their HSR determination on a timely basis.

### *Got sole? Want to get it?*

Hospitals that are not currently recognized as an SCH, but are at least 25 road miles, and in some cases less, from the nearest like hospital (critical access hospitals – CAHs – are NOT like hospitals) will want to reconsider whether SCH status is a viable option in light of this 2006 HSR opportunity. This is the case since a hospital need not have been recognized as an SCH during or before 2006 to be eligible for the 2006 HSR. Also, in addition to the 2006 HSR change, rural SCHs have also been eligible for an approximately 7% increase in their Medicare outpatient APC rate since January 1, 2006.

If you have not assessed eligibility for SCH recognition in recent years, it may be time to look again. The conversion of many hospitals in recent years to CAH status has created a number of opportunities for hospitals that previously would not have qualified for SCH status to now obtain that status. SCH status is available to urban or rural hospitals that are at least 35 miles from the nearest like hospital using the shortest distance over improved roads. Rural hospitals are also eligible for SCH recognition if they are at least 25 miles from the nearest like hospital and meet a 75% market share test. Rural hospitals, regardless of distance to the nearest like hospital, are also eligible if they meet the 45 minute travel time test – based on a specific formula using speed limits and weather conditions – not actual drive time.

Application of any of these tests involves many nuances contained in the assortment of CMS guidance addressing the subject over the years and a detailed assessment of local geography. Urban hospitals that do not meet the 35 mile test, but meet one of the rural SCH tests, may still be able to obtain SCH status by seeking CMS redesignation of the hospital to rural status.

If you would like additional information about the 2006 rebasing issue or potential eligibility for SCH status, please contact your regular Hall Render attorney, David Snow (414-721-0447; [dsnow@hallrender.com](mailto:dsnow@hallrender.com)) or Todd Nova (414-721-0464; [tnova@hallrender.com](mailto:tnova@hallrender.com)).

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