

SECOND IN SERIES ON MEDICARE DSH PAYMENT ISSUES

EXECUTIVE SUMMARY

This is the second in a series on Medicare Disproportionate Share Hospital ("DSH") payment issues and is designed to provide hospitals with a practical approach for determining if they want to pursue different DSH appeal issues.

On September 11, 2012, CMS posted the 2010 DSH-SSI (Supplemental Security Income) ratios. As reported previously [here](#), CMS published the long-awaited ratios for Fiscal Years (FYs) 2006 - 2009 in March. With the imminent release of literally hundreds of cost report settlements that were held waiting on the SSI ratios, and many hospitals already receiving theirs, hospitals should be examining their cost reports to determine which issues are impacting them, with particular attention focused on DSH reimbursement since this often involves significant dollars. Below is an outline, set up in a "To Do List" format that we have prepared to assist hospitals in examining their potential DSH appeal issues.

■ Before Receipt of Notice of Program Reimbursement/NPR

- Request underlying DSH data relied on by CMS through Data Use Agreement ("DUA") process; go to http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/Privacy/DUA_-_DSH.html to request DSH data. Compare CMS DSH data to Hospital's data to determine discrepancies.
- Assemble Labor & Delivery ("L&D") Days data and submit to FI/MAC with delivery confirmation. CMS Ruling 1498-R (1498-R) allows L&D Days to be counted in the Medicaid, or if applicable Medicare, ratio.
- Assemble Dual Eligible (Medicare/Medicaid) Days data to use as a proxy to compare to **Medicare/SSI Days data obtained from CMS**.
- Assemble Medicare Exhaust and Secondary Payor (Medicare Non-Covered/MNC) Days data to compare to CMS DSH data.
- Assemble Medicare Advantage ("MA") Days data to compare to what CMS included in DSH data.
- **If you would like us to provide you with your SSI ratios from 2002 - 2010**, we have that data available. Please contact Lauren Hulls at lhulls@hallrender.com or 317-977-1467, Rita Kovach at rkovach@hallrender.com or 317-977-1571 or Lee Tallant at mtallant@hallrender.com or 317-977-3635 to request this information.

■ After Receipt of NPR

- Compare new SSI ratio used in settled cost report, published by CMS on 3/16/12 at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/dsh.html>, to original published ratio for 2006 & 2007; Hall Render has 2006 & 2007 original SSI ratios if Hospital does not. Do further comparisons between all FYs through 2010 to determine trends and dollar impact of changes.
- If SSI ratio has decreased (or if SSI ratio has increased, but only slightly or not as much as expected and/or you want to do further analysis), then:
 - Determine to what extent **Medicare Non-Covered ("MNC") Days**, which are Medicare Exhausted Benefits and Medicare Secondary Payor Days, impact DSH. To the extent these days are also Medicaid eligible, they will now be counted in the Medicare ratio pursuant to 1498-R, whereas previously they had been counted in the Medicaid ratio. The majority of the time this tends to dilute the Medicare ratio causing a reduction in DSH payments because not all of these patients receive SSI benefits; therefore, the days are not counted in the Medicare/SSI numerator but are counted in the denominator. On appeal, Hall Render will argue such MNC Days either stay in the Medicaid ratio or, alternatively, if counted in the Medicare ratio, all such days must be counted in both the Medicare/SSI numerator & Total Medicare Days denominator because such patients would be entitled to/eligible for SSI in the same way CMS claims patients with MNC days are still entitled to/eligible for Medicare.

- Determine to what extent **Dual Eligible Days** impact the SSI ratio. Dual Eligible Days that are not also SSI Days, where Medicare is primary payor (in other words they are not MNC Days), are not currently included by CMS in the DSH calculation but arguably should be. SSI recipients can lose their income benefit when in nursing homes or under certain work programs but retain their medical benefit/Medicaid coverage; hence, Hall Render will argue they are still entitled to/eligible for SSI.
- Determine to what extent **MA Days** impact the SSI ratio. (Most likely causes SSI ratio to decrease; Hospitals were instructed to submit no-pay bills for MA Days since 2006, but not all did in 2006 & 2007. CMS has indicated their DUA - DSH data will identify MA Days, so hospitals can compare it to their own data.)
- Determine, if possible, to what extent there are **SSI Data Match** issues that impact the Medicare ratio. This is the original DSH-SSI appeal issue we filed. (Need access to SSI Days data to do this analysis; can use Dual Eligible Days as a proxy.)
- Verify DSH Days allowed by CMS policy.
 - L&D Days - If previously submitted data to FI/MAC, verify all such L&D Days are included in DSH ratios. (Should cause overall DSH to increase; most will be in the Medicaid ratio.)
 - Verify all other Medicaid Eligible Days (i.e., unpaid days, out-of-state days, HMO days, etc.) are included in Medicaid ratio.
- Are there other issues impacting your Hospital that were not appealed previously, such as:
 - BNA 2
 - Pension - if the wage index for your Metropolitan Statistical Area (MSA)/CBSA is impacted by this issue.

■ **Appeal, within 180 Days of NPR date, all potential DSH and other Medicare appeal issues**

If you have any questions, please feel free to contact Maureen O'Brien Griffin at mgriffin@hallrender.com or 317.977.1429, Keith Barber at kbarber@hallrender.com or 317.977.1428, Liz Elias at elias@hallrender.com or 317.977.1468 or your regular Hall Render attorney.