

## MAC ATTACKS ON THE RISE FOR ALLIED HEALTH EDUCATION PROGRAMS

Recently, hospitals operating nursing and other allied health ("N&AH") education programs have experienced increased scrutiny during Medicare Administrative Contractor ("MAC") audits concerning their receipt of pass-through cost reimbursement. In many instances, MACs have begun disallowing or reclassifying costs that N&AH education programs received without issue for many years.

Oftentimes the MACs are citing new interpretations of existing standards or standards that do not actually exist in the regulations. Generally, MACs have been paying particular attention to, and are more strictly construing, regulations regarding the provider-operated requirement and the purported improper designation of normal operating expenses as pass-through costs. MACs are also scrutinizing hospitals' corporate structures and the relationship between hospitals and their corporate systems, as well as other N&AH reimbursement rules. MACs are strictly construing program requirements in a way that can threaten a provider's qualification for *any* N&AH education program reimbursement, sometimes resulting in recoupment of payments for past fiscal years through reopenings of previously settled cost reports.

One federal court has recently reviewed a MAC's disallowance of N&AH costs and determined the MAC's interpretation was owed no deference because the court found it was contrary to the MAC's longstanding practice with regard to that provider's program. *William Beaumont Hosp.-Royal Oak v. Price*, No. 16-13528, 2018 WL 1556241, at \*7 (E.D. Mich. March 29, 2018). Additionally, in *Azar v. Allina*, 139 S. Ct. 1804 (2019), the Supreme Court recently imposed more stringent notice-and-comment rulemaking requirements on the Medicare program regarding changes in reimbursement policies. Thus, providers may be more likely to succeed in pass-through cost reimbursement disputes concerning pass-through costs that were reimbursed in past fiscal years.

### PRACTICAL TAKEAWAYS

Providers should carefully review their NPRs and audit adjustments to determine whether the MAC has disallowed or reclassified Allied Health education program costs that have previously been reimbursed on a pass-through basis. If so, providers should strongly consider an appeal. It is important to note that each provider's N&AH program is unique and will require a careful assessment of the program requirements and the payment rules to determine whether an appeal is warranted.

If you have any questions or would like additional information, please contact:

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