HALL RENDER
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HEALTH LAW NEWS

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FIRST IN SERIES ON MEDICARE DSH AND TOP COST REPORT APPEAL ISSUES

On March 16, 2012, CMS published the long-awaited Supplemental Security Income (SSI) ratios used in computing Medicare Disproportionate Share Hospital (DSH) payments for Federal Fiscal Years (FFYs) 2006, 2007, 2008 and 2009. This should finally end the cost report settlement moratorium implemented by CMS in July 2008 and lead to a flood of Notices of Program Reimbursement (NPRs) being released for open cost reports, which for many hospitals date back to FY 2007 and earlier.

Since it has been nearly four years since most hospitals have received an NPR, this article will be the first in a series that will refresh our collective memories on potential cost report appeal issues that hospitals will want to review and consider pursuing.

One key appeal rule change requires cost reports ending on or after December 31, 2008 to have all appeal issues included as Protested Items in Line 30 on Worksheet E, Part A. Please ensure that your potential appeal issues are being preserved when you file your cost report. It is also possible to file an amended cost report prior to the issuance of the NPR for that year. If you protest more than one issue, please ensure that you are itemizing each issue and the impact.

TOP COST REPORT APPEAL ISSUES

- DSH
  - Medicaid Eligible Days
  - Dual Eligible (Medi-Medi, Crossover) Days
  - Ensuring Correct Counts of Labor and Delivery (LDR) Days
  - Ensuring Correct Counts of SSI Days
  - Medicare Advantage (Medicare C, M + C) Days
  - Medicare Non-covered Days (Part A Exhausted Days, Medicare Secondary Payor Days)
  - Observation Bed Days
  - § 1115 Waiver Days
  - Capital DSH Only
- Graduate Medical Education/Indirect Medical Education (GME/IME)
  - Correct Bed Counts
  - Correct Day Counts
  - Non-hospital Site Rotations
  - Research Time
  - Excluded Unit Rotations and Excluded Unit Caps
  - Full Time Equivalent (FTE) Counts for Time Spent as Chief Resident
  - FTE Counts for Fellows and Approved Medical Education Program Status Issues
  - FTE Counts for Vacation, Sick and Didactic Time
  - Disallowed Time Based on Program Status: "New Program" vs. Not New
  - Disallowed FTE Cap Sharing Based on Medicare GME Affiliation Agreement Problems

- Disallowances Based on "Shared Programs" or Shared Non-hospital Site Rotations
- Disallowances Based on Disfavored "Global Agreements"
- Per Resident Amounts and FTE caps for New Teaching Hospitals with New Programs
- Community Support Disallowances
- Clinical Base Year
- Medicare Advantage (Medicare C, M + C) Patients
- Although not an appeal issue, hospitals within systems can consider affiliation agreements to leverage resident counts.

- Bad Debt
  - Offset of Recoveries When Bad Debts Not Allowed in Prior Years
  - Dual Eligible/Crossover Claims
- End Stage Renal Dialysis (ESRD) Add-on Payment for Hospitals with High Percentage of ESRD Discharges
- Outlier Reconciliation
- Wage Index Issues
- Sole Community & Medicare Dependent Hospitals
  - Documentation & Coding Adjustments Applied to the Hospital Specific Rate
  - Low Volume (5% or greater decline in total discharges year to year) Adjustments

We will be issuing additional bulletins providing more information on many of these issues. In the meantime, if you have any questions regarding this article, please contact:

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