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Practice Area: Health Law

Many hospitals have recently received a letter from Advanced Reimbursement Strategies soliciting their participation in a group appeal of the Medicare “blended rate” payment methodology applicable to certain hospital outpatient surgery and diagnostic procedures provided to Medicare patients before the hospital outpatient prospective payment system (“HOPPS”) started. To have the ability to benefit from the group appeal, by participating directly or otherwise, **hospitals must individually file a timely appeal with the Provider Reimbursement Review Board (“PRRB”)** for the affected cost reports (1999 and 2000). It is likely too late for 1999, however, **the deadline for many 2000 cost reports will run before the end of March 2004.**

Relevant statutes provide that the blended rate payment methodology was to sunset on December 31, 1998 because HOPPS was scheduled to begin on January 1, 1999. As we all know, however, HOPPS was delayed until August 1, 2000. Despite the statutory provision that the blended rate methodology was to sunset, CMS continued to apply that methodology for services provided through July 31, 2000. The premise of the group appeal is that payment should have reverted to pure cost reimbursement during these 19 months.

Whether that premise will ultimately be successful is not clear. However, what is clear is that for a hospital to have an opportunity to benefit from this issue, its 1999 and 2000 cost reports must be timely appealed to the PRRB. For most hospitals it is probably too late for the 1999 cost report. The request for hearing must be filed with the PRRB within 180 days of the date of the notice of program reimbursement (“NPR”). However, due to the cost report delays associated with the conversion to HOPPS, NPRs for many of the 2000 cost reports were issued in September 2003, and some have not yet been issued. Therefore, for many hospitals, the 180 day deadline will be expiring in March, 2004. Specifically for an NPR issued September 30, 2003, the appeal deadline will be March 28, 2004. If the NPR was issued earlier in September, then the deadline will be that much earlier in March.

We are not in any way endorsing participation in the blended rate group appeal or intending to suggest that it is likely to be successful. We only wish to alert hospitals to the possibility, and the need to preserve appeal rights by filing the request for hearing on a timely basis. This issue could mean hundreds of thousands of dollars per year, so it is likely advisable to at least preserve appeal rights. If a hospital has already appealed its 1999 or 2000 NPR, the blended rate issue can be added by filing an additional request with the PRRB. Once an appeal is timely filed, a hospital can decide whether to participate in the group appeal or to park the appeal at the PRRB and wait on the sidelines to see what happens with the group. If the group is successful, it may be possible to obtain a favorable settlement even without being part of the group. Hospitals that were qualified as critical access hospitals during this time period were already paid costs for these services and so cannot benefit from this group appeal.

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