Medicare DSH Update and Recent Developments
TAHFA & HFMA Lone Star Chapter
West Texas Seminar
* Winds of Change *
February 13, 2015

Presented by:
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The New DSH
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Manie Campbell, Partner
10 Truisms of Medicare

1. Just because it has a code doesn’t mean it’s covered.
2. Just because it’s covered doesn’t mean you can bill for it.
3. Just because you can bill for it doesn’t mean you’ll get paid for it.
4. Just because you’ve been paid for it doesn’t mean you can keep the money.
5. Just because you’ve been paid once doesn’t mean you’ll get paid again.

10 Truisms for Medicare

6. Just because you got paid for it in one state doesn’t mean you’ll get paid in another state.
7. You will never know all the rules.
8. Not knowing the rules can land you in the slammer.
9. There’s always somebody who doesn’t get the message.
10. There’s always somebody who gets the message and ignores it.
Medicare DSH Reimbursement

- Source: CMS, Office of the Actuary.

DSH Rule For FFY 2015

New DSH Formula FFY 2014
- 25% based on current formula
- 75% based on uncompensated care
  - DSH cap of 12% does not apply to uncompensated care
  - Does not impact Capital DSH
CMS’s Definition Of Uncompensated Care

DSH Uncompensated Care

**Factor 1**

75% of amount which would have been paid under old DSH formula

- CMS estimates this to be $14.234 billion

\[ \text{DSH Payment under old rule} = 14.234 \text{B} \times 75\% = 10.68 \text{B} \]
DSH Uncompensated Care

Factor 2
1 minus percent change in uninsured population

- Uninsured percentages based on CBO estimates
  - Uninsured in 2013 (based on 2010 report) = 18%
  - Estimate for 2014 published in Feb 2014 = 16%
  - Estimate for 2015 published in Feb 2014 = 13%
  - Weighted FFY 2015 = 13.75%

\[1 - \frac{(0.1375 - 0.18)}{0.18} = 1 - 0.2361 = 0.7639\text{ less statutory reduction .002 = 0.7619}\]

\[\$10.037B \times 0.7619 = \$7.647B\]

DSH Uncompensated Care

Factor 3
- Percent of individual hospital uncompensated care costs to total uncompensated care costs
  - This represents each hospital’s “piece of the pie”
  - CMS discusses the use of S-10 data
    - CMS indicates S-10 data is not yet appropriate to use
  - CMS proxy for uncompensated care is to count low income patients
  - CMS to use Medicaid eligible days and SSI days as a proxy for uncompensated care
  - Hospitals in States which have accepted Medicaid expansion will benefit compared to hospitals States without Medicaid expansion
  - **Cannot be appealed**
    - If at audit your % goes down, payback
    - If it goes up, nothing
FFY 2015 – Medicare DSH

• Source of Factor 3 – DSH UCC allocation
  • Same rules apply for counting Medicaid days
  • Source for Medicaid days – “most recent available filed cost report”
  • Appears to be based on cost report period beginning in FFY 2012 for most providers
  • HCRIS database from December 2014
  • Source for Medicare SSI days – “most recent available SSI ratios”
  • Currently the most recent SSI is 2012 (Part C issue)

FFY 2015 Medicare DSH

• No redistribution or reconciliation for UCC per 2014 final rule. If SCH received allocation and should not have, no retroactive change to other hospital percentages.
• Estimates made by Secretary are not subject to judicial review
• UCC payments made on a per discharge basis. Estimates in table. Settled on filed cost report.
• SCH – Secretary estimates whether they will receive UCC. If this estimate is incorrect, the settlement will be made on filed cost report.
FFY 2015 – Medicare DSH Recommendations

- Verify Medicaid days used in the rule table.
- Verify that they represent a full cost report period.
- Verify status of qualifying for DSH in Table.
- Include all appropriate Medicaid days in future filed cost reports. Depending on timing, amendments may not be included in the allocation.
- Protest anything and everything.

Issuance Of The NPRs

NPR’s:
Being issued or have been issued for fiscal years 2007-2012

Various issues that may need to be appealed or reopened in the future:
- Disproportionate Share Hospital (DSH) Calculation
  - SSI percentage Ratios (SSI%)
  - Medicare Part C Days
  - Dual Eligible Days – Exhausted Days and Medicare Secondary/No Pay Days
- Systemic Errors
- DSH Eligible Days
Issuance Of The NPRs: Recommendations

Order MEDPAR Data through the Centers for Medicare and Medicaid Services (CMS)
  • Data Usage Agreement (DUA) process

Appeal your NPRs for self-disallowed items or items adjusted during audit
  • Whether through an Individual Appeal or Group Appeal

Join Group Appeals
  • Strength in numbers
  • May not have a choice

The Appeals Game

There are four (4) players in the Medicare cost report appeals arena
  • The Provider
    • Appeals adjustments
  • The MAC
    • Defends adjustments
  • The PRRB
    • Strong interest in docket management
    • If a case can be dismissed, it will be dismissed
  • The Courts
Jurisdictional Challenges

The PRRB is currently questioning jurisdiction when a provider appeals an issue not adjusted or protested for all cost reporting periods ending on or after December 31, 2008.

The PRRB is generally denying jurisdiction

Need to amend cost reports that have not had an NPR issued
- MAC reluctant to amend cost reports for protest item only

Protest – It may be your only avenue to appeal an issue

Recent Legal Update – Trouble’s Brewing
Recent Updates

- **Allina** and Beyond
- **Danbury**
- **Protest, Protest, Protest**

Allina

Procedural History

- **Issue:** Whether enrollees in Part C are entitled to benefits under Part A, such that they should be counted in Medicare fraction, or, if not entitled to Part A, should they be included in Medicaid fraction.
- Argued February 7, 2014 before United States Court of Appeals
- Decided April 1, 2014
- Affirmed in-part, reversed in-part lower court decision
- Clarification: regulation effective FFY 2014

**UPDATE:** “We are finalizing our proposal to readopt the policy of counting the days of patients enrolled in the MA plans in the Medicare fraction of the DPP for FY 2014 and subsequent years.” 2015 IPPS Final Rule.
Danbury Arguments

- Decided by PRRB – May 23, 2014
- PRRB ruled in favor of MAC (*surprise!!!!*)

**Issue:** Whether the PRRB has jurisdiction over Medicaid days when there was no adjustment?

<table>
<thead>
<tr>
<th>Provider Contention</th>
<th>MAC Contention</th>
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<tbody>
<tr>
<td>• Claimed tantamount to Bethesda “self-disallowance”</td>
<td></td>
</tr>
<tr>
<td>– futile, no support data</td>
<td></td>
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<tr>
<td>• Data not available from State to validate at cost report filing</td>
<td></td>
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<tr>
<td>• cited PRRB rule 7.2A</td>
<td></td>
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<tr>
<td>– Requires concise statement</td>
<td></td>
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<tr>
<td>• No adjustment or protest item on cost report</td>
<td></td>
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<tr>
<td>– i.e., no adjustment no protest</td>
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<tr>
<td>• Provider has responsibility of submitting complete and accurate data on cost report</td>
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<tr>
<td>– Not CMS responsibility to collect Medicaid data – It’s yours!!</td>
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</tbody>
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Danbury Lessons:
- Include protest item on cost report filing for Medicaid days
- Amend cost report if possible to include protest
- File appeal/reopening of adjustment
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