



Alerts

Health Care Reform to Reduce Medicare DSH Payments

April 29, 2010

Hinshaw Health Law Alert

This is the eighth in a series of health care alerts that Hinshaw & Culbertson LLP will publish on the topic of health care reform.

The Patient Protection and Affordable Care Act (PPACA) makes significant changes to Medicare Disproportionate Share Hospital (DSH) reimbursement payments. Beginning in 2014, it appears that DSH payments will be substantially reduced (although the exact payment amounts will not be able to be ascertained until 2014 or later).

DSH Payments Before Health Care Reform

Currently, a hospital's DSH payment is determined by its Disproportionate Patient Percentage (DPP). The DPP is the sum of two fractions expressed as a percent; the Medicaid fraction and the Medicare/SSI fraction. All acute care inpatient hospitals under the prospective payment system (PPS) qualify for DSH reimbursement, if the DPP is at least 15 percent. The DSH issue has various sub-issues regarding the counting and inclusion of days that impact the reimbursement calculation. For example, Medicaid eligible but unpaid days, labor room days, general assistance days, SSI waiver days and the proper SSI percent are all DSH sub-issues. The DSH issue is the most litigated Medicare reimbursement issue. The amount at issue for some large hospitals can be in the millions of dollars.

DSH Payments After Health Care Reform

Section 3133 of the PPACA, amends Section 1886(r) of the Social Security Act with regard to DSH payments to provide that, beginning in the fiscal year 2014 and each subsequent fiscal year, a DSH hospital will be paid only 25 percent of the amount of DSH reimbursement than it normally would have been paid. However, in addition to this reduced payment, a hospital will be paid an *additional* payment based upon the *product* of three complex factors.

The first factor considers the difference between the DSH payments made to the hospital under the old provision and the payments made to the hospital under the new law.

The second factor considers a calculation equal to one, minus the percentage change (divided by 100) in the percentage of individuals under the age of 65 who are uninsured, as determined by comparing the percentage of such individuals who are uninsured in 2012 and those who are uninsured in the most recent period for which data is available (as so calculated).

The third factor considers a number equal to the percentage for the hospital that represents the quotient of the amount of uncompensated care for such hospital for a period selected by the United States Secretary of Health and Human Services (as estimated) and the aggregate amount of uncompensated care for all DSH hospital payments made under the new law.

Statistics regarding uninsured patients and uncompensated care amounts in future fiscal years cannot be determined currently. Therefore, the additional DSH payment to be added to the reduced payment rate under the reform law cannot be determined currently. Accordingly, the exact amount of DSH payments beginning in 2014 cannot be determined. But they will probably be substantially lower under the new law.



What Needs to be Done

Although the exact amount of the DSH hospital payments beginning in 2014 under the new law cannot be accurately determined now, it is clear that DSH payments will probably be reduced substantially based on Congressional Budget Office (CBO) DSH payment estimates. Therefore, all DSH hospitals should consider aggressively pursuing their proper amount of DSH payments for all cost reporting periods preceding 2014. Provider Reimbursement Review Board (PRRB) appeals should be filed for pre-2014 cost reporting periods in order to protect the DSH issue and the sub-issues being challenged. Beginning in 2014, it will be difficult for DSH hospitals to challenge the DSH payment calculation and reduced payment rate.

For further information, please contact your regular [Hinshaw attorney](#).

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.