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Date: December 3, 2010

***Court of Appeals Affirms District Court Decision Regarding Hospital's Claims for GME and IME Costs for Part C Enrollees***

**By Gilbert F. Ganucheau, Esq.\***

On December 2, 2010, the Court of Appeals for the D.C. Circuit affirmed, in an unpublished opinion, the D.C. District Court's decision reversing a Decision by the Administrator of CMS and remanding the matter to the Secretary for further proceedings. The lower court's decision was discussed in a RAP Alert dated February 25, 2010.

In the district court case, Loma Linda University Medical Center ("Hospital") had sought judicial review of a denial by the Secretary of claims for payment of IGME and GME expenses related to services rendered to Part-C, Medicare+Choice, Enrollees. The Hospital had tried unsuccessfully to submit claims for medical education costs associated with some Medicare Part C beneficiaries because the hospital did not have those patients' HIC numbers. In contrast to the cards that Part A beneficiaries present upon registration at a hospital, Part C beneficiaries' insurance cards do not include HIC numbers. The hospital made efforts to collect HIC numbers from Part C enrollees. For example, the hospital asked patients for their HIC numbers when they registered at the hospital, by telephone, and by letter. The hospital also tried to obtain HIC numbers from the "Common Working File," a Medicare database. The hospital was only partially successful in its efforts. The hospital requested that the FI use information it provided, rather than requiring UB-92 forms, to calculate the payments due. The FI denied the requested reimbursement and the hospital appealed to the Provider Reimbursement Review Board (PRRB).

The PRRB ruled for the hospital, concluding that the FI improperly disallowed the hospital's requested reimbursement for additional GME and IME costs for the three cost years at issue. The majority of the board concluded that CMS should have announced by regulation the system for requesting GME and IME payments associated with Part C services. The CMS administrator reversed the PRRB. The administrator found that no new regulation was required to implement the system contemplated by PM A-98-21 and rejected the hospital's argument that the inability to collect HIC numbers was the cause of its missing claims. It found that the claims were both insufficient and untimely.

On appeal from the administrator's decision, the district court disagreed with the Secretary that by specifying the UB-92 as the method for claiming such costs, the hospital was put on notice that the Part A rules applied, including the timely filing limit applicable to Part A claims. After determining that untimeliness was not a valid reason for rejecting the hospital's claims, the court turned to the issue of whether the form of the information submitted by the hospital was reason for denying the claims. The court noted that the CMS administrator did not refute the hospital's contention that the information it provided was identical to the data that would be included in UB-92 forms, but rather decided that the complications arising from receiving the data in a form other than the one designed to "interface with" the Provider Statistical and Reimbursement Report (PS&R) system were too great. The court noted that the administrator gave no response to the hospital's argument that a letter it received from its FI indicated that use of the PS&R was not mandatory and that in certain instances the hospital could elect to use its records in part or in total in filing the cost report. Accordingly, the court remanded the case to the Secretary for further explanation of or investigation into whether the fiscal intermediary is able to process the hospital's claims.

On appeal by the Secretary to the court of appeals, the court held that the Hospital had not received notice "with "ascertainable certainty"" of the billing deadline for seeking payment of the GME costs. It further held that the Secretary had not provided a sufficient explanation to allow the court to determine the reasonableness of the Secretary's rejection of an alternative method to compute the amount due the Hospital. The court of appeals remanded the case to the district court for further proceedings.

***Loma Linda University Medical Ctr. v. Sebelius (D.C. Cir., Dec. 2, 2010)***

*\*—We would like to thank Gilbert F. Ganucheau, Jr. Esq., of Kathleen L. DeBruhl & Associates, LLC, New Orleans, LA, for providing this email alert.*