May 7, 2014

To: IHA Chief Executive Officers

From: Maureen O’Brien Griffin, Keith D. Barber and Elizabeth A. Elias, IHA Counsel Hall, Render, Killian, Heath & Lyman, P.C.

Re: Reminder to Protest Cost Report Appeal Items – Spring 2014

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Recent PRRB decisions have emphasized the importance of preserving issues for later appeal through the Protested item process. 42 C.F.R. § 405.1835 requires that Providers follow the Protest process when filing a cost report in compliance with Medicare rules with which they disagree. The Protest must challenge specific items. The recently issued IPPS FFY 2015 Proposed Rules will increase the importance of declaring costs or protesting issues on the cost report if finalized this Fall.

Accordingly, Providers should take care to include in their initial, as-filed 2013 and 2014 cost reports challenges related to a variety of issues such as those listed below, where the Provider is impacted by the issue and desires to preserve appeal rights.

Top Cost Report Appeal Issues

- DSH
  - Medicaid Eligible Days
  - Dual Eligible (Medi-Medi, Crossover) Days – Medicare and Medicaid Fractions, including all Medicare Non-covered Days, Part A Exhausted Days, Medicare Secondary Payor Days
  - Ensuring Correct Counts of SSI Days (Data Match)
  - Medicare Advantage (Part C, M + C) Days - Medicare and Medicaid Fractions
  - Low Income Proxy (LIP) for Rehab hospitals and units
  - § 1115 Waiver Days
  - Capital DSH only

- All Labor Room Days should be included in your submitted cost report’s Medicaid Days, including labor days prior to delivery (do not file as a Protest item as these days are now allowable)

--Note 1: See the attached Excel "Toolkit" for guidance on determining which DSH issues may be applicable to your hospital and estimates of the potential amount in controversy.
Note 2: Starting in FFY 2014 the DSH rules change dramatically; only 25% of a Hospital's Medicare DSH will be computed using the current methodology, and issues related to this portion are appealable. The remaining 75% is based on CMS’s proxy for determining the national uncompensated care pool, which according to the statute is beyond administrative or judicial review. However, these rule changes do not affect discharges prior to October 1, 2013.

- GME/IME (Graduate Medical Education/Indirect Medical Education)
  - 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 (PRAs) and FTE caps for New Teaching Hospitals with New Programs
  - Community Support Disallowances
  - Clinical Base Year
  - Medicare Advantage Patients
  - Although not an appeal issue, hospitals within systems can consider affiliation agreements to leverage resident counts
  - Disputes impacting current cost reports related to PY IRB (Prior Year Intern-Resident-to-Bed Ratio), Prior Year or Penultimate Year FTE counts.

- Bad Debt Issues
  - 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 – if a hospital receives more than $500,000 in outlier payments and the amount of outlier payments is more than 10% different from the prior year, consider including a protest for outlier reconciliation.

- Wage Index Issues

- Sole Community & Medicare Dependent Hospitals
  - Low Volume (5% or greater decline in total discharges year to year) Adjustments
Two Midnight 2% Offset For FFY 2014. Hospitals that did not preserve this issue by filing appeals from the Federal Register this winter could still preserve the issue by protesting this item in their 2013/2014 cost reports.

If you have any questions regarding this Memorandum, please contact Maureen O'Brien Griffin at 317-977-1429 or mgriffin@hallrender.com; Liz Elias at 317-977-1468 or eelias@hallrender.com; Rita Kovach at 317-977-1571 or rkovach@hallrender.com; Scott Geboy at 414-721-4451 or sgeboy@hallrender.com for GME/IME issues; Keith Barber at 317-977-1428 or kbarber@hallrender.com for Wage Index or Two Midnight Rule issues.

Routing Suggestions: Chief Financial Officers, Reimbursement Manager
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