

400 Hospitals Ink Uncompensated Care Deal With Medicare

By **Jeff Overley**

Law360, New York (July 14, 2016, 11:11 PM ET) -- More than 400 hospitals have entered a confidential settlement of long-running litigation over disputed calculations of Medicare reimbursement for uncompensated care, according to court records filed Thursday and sources with direct knowledge of the deal.

The court records filed in D.C. federal court disclosed the settlement of several lawsuits launched as far back as 2010 challenging calculations of so-called disproportionate share hospital payments, or DSH payments. According to sources who requested anonymity, roughly 430 hospitals and 1,700 cost years of DSH reimbursement are covered by the settlement — about four cost years per hospital, on average.

The settlement terms are confidential, the sources said. Disputed amounts totaled tens of millions of dollars, according to court records.

The cost years covered by the settlement began prior to Oct. 1, 2004. There is ongoing litigation covering a “small number of later cost years,” the sources said.

The ongoing litigation includes *Allina Health Services v. Burwell* and *Allina Health System v. Burwell*. Related suits should be stayed pending a decision in either of those two cases, according to a joint motion from hospitals and regulators filed Thursday.

Hospitals deliver billions of dollars in uncompensated care annually, and DSH payments are calculated using a complex formula that attempts to estimate the number of low-income patients served. The litigation centers on which patients should be included in different parts of that formula.

For example, a key part of the formula is how many patients are “entitled to benefits” under traditional Medicare. If more patients are entitled to benefits, then the subset of low-income patients would be a smaller percentage of all patients treated, and DSH payments would be reduced.

In the now-settled cases, hospitals challenged various attempts to count patients as entitled to benefits. The hospitals argued for excluding patients who had exhausted their benefits, patients whose treatment was covered by a secondary payor and patients whose treatment was not otherwise covered by traditional Medicare.

In the ongoing litigation, **a key question** is whether Medicare Advantage beneficiaries are entitled to benefits under traditional Medicare.

Representatives of the parties had no immediate comment on Thursday.

The hospitals are represented by Christopher L. Keough and Stephanie A. Webster of Akin Gump Strauss Hauer & Feld LLP.

Medicare is represented by Channing D. Phillips, Daniel F. Van Horn and Joshua Kolsky of the U.S. Department of Justice, and Margaret M. Dotzel, Janice L. Hoffman and Susan Maxson Lyons of the U.S. Department of Health and Human Services.

The lead case is Alegant Health – Bergan Mercy Health System et al. v. Burwell, case number 1:10-cv-01354, in the U.S. District Court for the District of Columbia.

--Editing by Aaron Pelc.

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