AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys at Law

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HEALTH INDUSTRY ALERT

ANOTHER MEDICARE DSH ADJUSTMENT VICTORY FOR HOSPITALS

In a case involving an issue of first impression in federal courts, the U.S. District Court for the District of Columbia recently ruled that the secretary (the Secretary) of health and human services' interpretation of the Medicare Act's disproportionate share hospital (DSH) adjustment provisions once again ran contrary to congressional intent. *See Adena Regional Medical Center v. Leavitt*, Case No. 1:05-cv-02422-GK (D.D.C. 2007). Since the case may have significant implications for your institution, this *Health Industry Alert* provides a summary and analysis of the highlights of this decision.

The Medicare DSH adjustment is calculated according to a formula that is based upon the determination of a hospital's "disproportionate patient percentage," which is the sum of two fractions. *See* 42 U.S.C. § 1395ww(d)(5)(F)(vi). The first fraction, known as the "Medicare/Supplemental Security Income (SSI) fraction," is based on those provider patients who are both Medicare beneficiaries entitled to Part A benefits for such days and entitled to SSI, a federal low-income welfare program for the aged and disabled. The second fraction is known as the "Medicaid fraction." *See* 42 U.S.C. § 1395ww(d)(5)(F)(vi)(II). Its numerator is required to include the total number of hospital patient days during the fiscal year of all patients who were eligible on such days for medical assistance under a state plan approved under Title XIX, but were not entitled to Medicare Part A benefits on such days. *Id.* The denominator of this fraction includes the total number of the hospital's patient days for the fiscal year.

In *Adena Regional Medical Center*, the court considered whether days associated with Ohio's Hospital Care Assurance Program (HCAP) should be counted in the Medicaid fraction of the Medicare DSH calculation. Ohio's Title XIX state plan, which has been approved by the Secretary, specifically includes coverage for residents under HCAP, which is part of the *Medicaid* DSH provisions of the state plan. Hospitals receive payment for providing, without charge, basic medically necessary hospital-level services to individuals who are residents of Ohio, are not otherwise Medicaid recipients, and whose incomes are at or below the federal poverty level. OAC § 5101:3-2-07.17. HCAP establishes a procedure for hospitals to be reimbursed for serving a disproportionate number of low-income individuals under the approved Title XIX state plan. To be eligible for HCAP, a patient must be an Ohio resident and not otherwise eligible for regular Medicaid. *See id*. § 5101:3-2-07.17(B). The state of Ohio receives federal matching funds for HCAP days under the Medicaid statute.

The hospitals argued that that the phrase "eligible for medical assistance under a State plan approved under subchapter XIX" is unambiguous, that HCAP days relate to patients who are so eligible, and, therefore, that the Medicaid fraction must include HCAP patient days. The Secretary argued that "he has reasonably interpreted the same phrase to mean 'eligible for Medicaid;' that the phrase in the statute is 'long-hand'; and that the terms are interchangeable." The Secretary also argued that as his reasonable interpretation is entitled to deference, there is no requirement under the statute to include HCAP patient days in the Medicaid fraction, and that the exclusion of these days is proper because those individuals are not eligible for traditional Medicaid benefits.

The court ruled that the Secretary's policy violated the plain meaning of the Medicare Act, which requires that the DSH adjustment calculation include all days where patients were "eligible for medical assistance under a State plan approved under Title XIX." 42 U.S.C. § 1395ww(d)(5)(F)(vi)(II). The court stated that "[t]he Secretary's argument is unpersuasive. The statutory formula unambiguously directs the Secretary to include all 'patients who . . . were eligible for medical assistance under a State plan approved under [Title] XIX'" in the Medicaid fraction.

The court further found that "Congress said what it meant; if Congress had meant to restrict the Numerator [of the Medicaid fraction] to Medicaid-eligible patients, it could have explicitly done so. The phrase 'eligible for *medical assistance under a state plan approved under Title XIX*' is not 'long-hand' for 'eligible for Medicaid.' It is undisputed that HCAP is a 'state plan approved under Title XIX.' Accordingly, the Secretary's exclusion of HCAP patients is inconsistent with the plain language of the statute and cannot be upheld." In so holding, the court found that any days of care that are part of a state's Title XIX plan must be considered medical assistance under Title XIX and included in the Medicare DSH adjustment calculation.

This analysis may apply to similar Title XIX Medicaid DSH programs in other states. This is a significant development because it is the first federal court ruling on the application of the Medicaid fraction to patients covered by programs like the Ohio HCAP.

CONTACT INFORMATION

If you have questions about the *Adena Regional Medical Center* case, need assistance with general Medicare DSH adjustment payment questions, or require counsel regarding associated Medicare appeals, please contact:

John R. Jacob ..... 202.887.4582 .....jjacob@akingump.com..... Washington, D.C.
Elizabeth H. Goldman ..... 202.887.4423 .....egoldman@akingump.com..... Washington, D.C.

Austin Beijing Dallas Dubai Houston London Los Angeles Moscow
New York Philadelphia San Antonio San Francisco Silicon Valley Taipei Washington, D.C.