

HLB

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HEALTH CARE LAWYERS

Healthcare Financial Management Association – Southern California Chapter

August 26, 2010 Educational Program

Medicare Litigation Update

Jordan B. Keville, Esq.

A. Bad Debt

- ❖ *Summer Hill Nursing Home v. Johnson*,
603 F.Supp.2d 35 (D.D.C., Mar. 25, 2009)
(Provider Properly Established that Bad Debts were Uncollectible)

- ❖ *Abington Crest Nursing and Rehabilitation Center, et al. v. Sebelius*,
575 F.3d 717 (D.C.Cir. Aug. 4, 2009)
(Bad Debt Reimbursement Not Applicable to Services Paid Under Fee Schedule Methodology)

- ❖ *Baptist Healthcare System dba Baptist Regional Medical Center v. Sebelius*
646 F.Supp.2d 28 (D.D.C. August 18, 2009)
(Providers Not Required to Conduct Asset Test to Determine Indigence for Bad Debt Purposes)

- ❖ *Detroit Receiving Hospital, et al v. Leavitt*,
575 F.3d 609 (6th Cir. July 30, 2009)
(CMS May Limit QMB Bad Debt Reimbursement)

- ❖ (Outpatient Therapy) *Vitality Rehab, Inc. v. Sebelius*,
641 F.Supp.2d 984 (C.D. Cal., Aug. 3, 2009)
(Secretary Reasonably Concluded that Bad Debt was Not Reimbursable under Fee Schedule Payment Methodology)

B. Wage Index/Rural Floor

- ❖ *Anna Jacques Hospital, et al. v. Sebelius*,
583 F.3d 1 (D.C.Cir. Sept. 11, 2009)
(When Calculating Wage Index, the Secretary May Exclude Data from Critical Access Hospitals that Qualified as Subsection (d) Hospitals During the Survey Year)
- ❖ *Cape Cod Hospital, et al., v. Leavitt*,
677 F.Supp.2d 18 (D.D.C. Dec. 21, 2009)
(Secretary's Calculation of the Rural Floor Budget Neutrality Adjustment was Reasonable)
- ❖ *Southeast Alabama Medical Center, et al. v. Sebelius*,
572 F.3d 912 (D.C.Cir., July 17, 2009)
(Secretary's Methodology for Compiling Occupational Mix Data is Reasonable)
- ❖ *St. Michael's Medical Center v. Sebelius*,
648 F. Supp.2d 18 (D.D.C., Aug. 26, 2009)
(Secretary Reasonably Excluded Data from Reclassified Hospitals in Calculating Wage Index)

C. Capital Costs

- ❖ *Albert Einstein Medical Center, Inc. v. Sebelius*,
566 F.3d 368 (3d Circ., May 22, 2009)
(Merger Does Not Qualify as Bona Fide Sale)

- ❖ *St. Luke's Hospital v. Sebelius*,
662 F.Supp.2d 99 (D.D.C., Sept. 29, 2009)
(Merger Does Not Qualify as Bona Fide Sale)
NOTE: D.C. Circ AFFIRMED.

- ❖ *Provena Hospitals v. Sebelius*,
662 F.Supp.2d 140 (D.D.C., Oct. 13, 2009)
(Merger Does Not Qualify as Bona Fide Sale)

- ❖ *UPMC St. Margaret Hospital v. Sebelius*,
2009 WL 3367630 (3d Cir., Oct. 21, 2009) (not published)
(Merger Does Not Qualify as Bona Fide Sale)

- ❖ *UPMC-Braddock Hospital v. Leavitt*,
592 F.3d 427 (3d Circ., Jan. 10, 2010)
(Secretary Must Analyze Both Prongs of Bona Fide Sale Test; Related Parties Analysis Applies to Relationship Between Parties Pre-Merger)

- ❖ *Osteopathic Founders Foundation v. Sebelius*,
2010 WL 2990176 (N.D.Okla. July 26, 2010)
(Sale Proceeds May Be Allocated to Intangible Assets for Purposes of Calculating Loss on Sale)

D. Disproportionate Share Payments

- ❖ *Phoenix Memorial Hospital v. Leavitt*,
Case No. 2:07-cv-1720-HRH (D. Ariz. Jan. 13, 2009) (Summary Judgment)
(Expansion Population Excluded from Medicaid Proxy for Purposes of DSH Calculation)
- ❖ *Cooper University Hospital v. Sebelius*,
2009 WL 3234625 (D.N.J. Sept. 28, 2009)
(Expansion Population Excluded from Medicaid Proxy for Purposes of DSH Calculation)
- ❖ *University of Washington Medical Center v. Sebelius*,
674 F.Supp.2d 1206, 2009 WL 3185592 (W.D. Wash. Sept. 30, 2009)
(Expansion Population Excluded from Medicaid Proxy for Purposes of DSH Calculation)
- ❖ *Northeast Hospital Corporation v. Sebelius*,
699 F.Supp.2d 81 (D.D.C. Mar. 29, 2010)
DSH Calculation: Charity Care Days, Dual Eligible Medicare Advantage Enrollees, Labor and Delivery)
- ❖ *Metropolitan Hospital, Inc. v. United States Department of Health and Human Services*,
2010 WL 1379600 (W.D. Mich., April 5, 2010)
(Inclusion of Part A-Exhausted Dual-Eligible Days for Purposes of DSH Calculation)
- ❖ *Banner Health v. Sebelius*,
2010 WL 2265039 (D.D.C. June 7, 2010)
(Expansion Population Days Excluded from Medicaid Proxy for Purposes of DSH Calculation;
Application of Hold Harmless Provision)

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CMS Ruling 1498-R

- ❖ CMS agrees to recalculate SSI percentage based on new matching method;
- ❖ CMS agrees to include dual eligible with exhausted Part A in DSH in Medicare but not Medicaid fraction;
- ❖ CMS concedes inclusion of L&D days in DSH calculation; and
- ❖ Attempts to divest PRRB jurisdiction until DSH recalculated.

E. GME/IME

- ❖ *Cottage Health System v. Sebelius*,
631 F. Supp.2d 80 (D.D.C. July 7, 2009)
(Notice of Claims Filings Requirements; Written Agreement Requirement for Residents in Non-Hospital Settings)
- ❖ *Loma Linda University Medical Ctr. v. Sebelius*,
684 F.Supp.2d 42 (D.D.C. Feb. 16, 2010)
(Secretary Improperly Determined that Hospital's Claims for GME and IME Costs for Part C Enrollees Were Insufficient and Untimely)
- ❖ *Hospital of University of Pennsylvania v. Sebelius*,
634 F.Supp.2d 9 (D.D.C. July 10, 2009)
(Timely Filing of UB-92s)
- ❖ *Covenant Medical Center, Inc. v. Sebelius*,
2009 WL 2926442 (E.D. Mich. Sept. 10, 2009)
(Secretary Reasonably Required Written Agreement Between Provider and Non-Hospital Site for Provider to Qualify for GME Reimbursement)
- ❖ *Medcenter One Health Systems and St. Alexius Medical Center v. Leavitt*,
666 F.Supp.2d 1043 (D.N.D. Oct. 13, 2009)
(Non-Hospital Sites)
- ❖ *Hackensack University Medical Center v. Johnson*,
2009 WL 2168719 (D.N.J. July 17, 2009) (not published)
(Providers May Not Use FTEs From Unaffiliated Hospitals to Increase FTE Count)

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E. GME/IME (cont'd)

- ❖ *University of Chicago Medical Center v. Sebelius*,
645 F.Supp.2d 648 (N.D. Ill. Aug. 3, 2009)
(Secretary Improperly Disallowed Research Time)
- ❖ *Rhode Island Hospital v. Sebelius*,
670 F.Supp.2d 148 (Nov. 24, 2009, D.R.I. 2009)
(Secretary Improperly Disallowed Research Time)
- ❖ *Henry Ford Hospital v. Sebelius*,
680 F.Supp.2d 799 (E.D. Mich. Dec. 30, 2009)
(Research Time; FTE Cap Increase)
- ❖ *Hillcrest Riverside, Inc. v. Sebelius*
680 F.Supp.2d 30 (D.D.C. Jan. 12, 2010)
(Application of Correct 1996 Base Year Cap in Later Cost Reports Did
Not Constitute Reopening of the 1996 Cost Report)
- ❖ *Langley Porter Psychiatric Institute v. Sebelius*,
2010 WL 3118687 (N.D. Cal. Aug. 3, 2010)
(Election to Aggregate FTEs Required for GME Reimbursement)

F. Miscellaneous Medicare Issues

- ❖ *Alta Bates Summit Medical Center v. Sebelius*,
660 F.Supp.2d 73 (D.D.C 2009)
(TEFRA)
- ❖ *Chalmette Medical Center, Inc. et al. v. U.S. Department of Health & Human Services*,
2009 WL 2488265 (E.D. La., Aug. 10, 2009)
(TEFRA: Secretary's Regulation Establishing Target Amounts is Reasonable)
- ❖ *Hardy Wilson Memorial Hospital v. Sebelius*,
010 WL 3259995 (5th Cir. Aug. 19, 2010)
(TEFRA)
- ❖ *Catholic Health Initiatives v. Sebelius*,
2010 WL 3198787 (D.C. Cir. August 13, 2010)
(MALPRACTICE COSTS: The Manual Provision Disallowing Insurance Premium Payments to Offshore Captive Insurer from Hospital Reasonable Cost Reimbursement was Outside the Secretary's Authority)
- ❖ *Gundersen Lutheran Medical Center, Inc. v. Johnson*,
2009 WL 596974 (D.D.C., Mar. 9, 2009)
(ESRD: Secretary Followed Regulatory Procedure in Making Determination on Exception Request)
- ❖ *KGV Easy Leasing Corp. v. Sebelius*,
2010 WL 342598 (C.D. Cal., Jan. 29, 2010)
(MEDICAL NECESSITY: Secretary Reasonably Denied IDTF Claims Due to Lack of Proper Documentation)
- ❖ *Heartland Regional Medical Center v. Leavitt*,
566 F.3d 193 (D.C.Cir. May 12, 2009)
(SCH STATUS)