



# CMS Issues Proposed Rule for Part B Inpatient Billing

March 18, 2013

The Centers for Medicare and Medicaid Services (“CMS”) issued CMS Ruling 1455-R on March 13, 2013 and a proposed rule on March 18, 2013 which substantially affect how hospitals are reimbursed for Part B services when a Medicare contractor denies payment for such services under Part A based on a finding that the inpatient admission was not reasonable and necessary. These rulemakings are in response to recent controversy in how these claims are paid.

In recent years, Medicare audit contractors (“Contractors”), including Recovery Audit Contractors (“RAC”), have scrutinized inpatient hospital claims and contested the decision of the admitting physician that inpatient services are reasonable and necessary. The Contractors allege that services would have been more appropriately provided in the outpatient setting and demand refund of the full amount paid under Medicare Part A. Despite the fact that the Contractor’s analysis finds that these services could and should have been billed as Part B outpatient services, CMS has historically taken the position that because proper Part B claims for these services were not timely filed, the hospitals are not entitled to offset. This position has been repeatedly reversed by the Medicare Appeals Counsel of the Departmental Appeals Board (“DAB”) and is currently being challenged in a lawsuit brought by the American Hospital Association.

## **CMS Ruling 1455-R**

The March 13th Ruling from CMS reverses CMS’s historic position and implements the holdings of the DAB regarding these claims. The ruling permits hospitals to submit claims and receive reimbursement for Part B services when a Part A claim is denied by a Contractor because it was determined not reasonable and necessary. Payment for Part B services will be made to the extent those services are reasonable and necessary and would have been paid if the patient had originally been treated as an outpatient, except for those services which specifically require outpatient status.

Medicare Contractors are instructed to waive timely filing requirements and accept these Part B claims even where they are not submitted within one (1) year of the date of service. This Ruling applies to Part A hospital claims that are denied by a Medicare Contractor 1) while the Ruling is in effect; 2) prior to the effective date of the Ruling, but for which the time to appeal has not expired; or 3) prior to the effective date of the Ruling, but for which an appeal is pending. The Ruling will end on the effective date of a final rule regarding these services.



## **Proposed Rule**

Similar to the interim ruling, the proposed rule permits hospitals to receive reimbursement under Part B for services as if the patient had originally been treated as an outpatient, except for services which specifically require outpatient status. The proposed rule would permit this payment when a Medicare Contractor determines services were not reasonable and necessary or when the hospital itself, in a post-discharge self-audit, makes the same finding.

However, the proposed rule would not apply to all Part A claims that are subsequently denied by Medicare Contractors as not reasonable and necessary. Medicare Contractors may currently review claims up to five (5) years from the date of service. However, the proposed rule will only permit payment of the corrected Part B claim by a hospital if it is submitted within one (1) year of the date of service. Part B claims presented more than one (1) year from the date of service will continue to be denied for timely filing, which is not appealable.

Additionally, the proposed rule does not permit adjustment by the reviewer who makes the Part A denial determination. The hospital must separately submit the claim for Part B services. This is primarily relevant because a Part B claim cannot be submitted where an appeal to the Part A determination is filed by the provider or the patient. As such, the hospital must either waive its appeal rights related to the Part A reasonable and necessary determination in order to timely file the Part B claim or appeal the Part A determination and waive the right to reimbursement for any Part B services.

## **Summary**

The language of the proposed rule, if finalized, will have significant implications on the ability of hospitals to recover for reasonable and necessary services when there is disagreement regarding the setting in which the services should be provided. The proposed rule is open for comments until May 17, 2013. Hospitals are encouraged to submit comments regarding the proposed rulemaking and to evaluate their pending claims and appeals to determine whether reimbursement is available under the interim CMS Ruling.

If you would like more information, please contact your Lathrop Gage attorney or one of the attorneys listed on this alert.