HCFA Rulings

Department of Health and Human Services

Health Care Financing Administration

Ruling No. 87-3 Date: April, 1987

MEDICARE PROGRAM

HCFAR 87-3

Hospital Insurance Benefits (Part A)

Validity of Provider Reimbursement Manual Section 2345 Relating to the Inclusion of Labor/Delivery Room Days in the Calculation of Inpatient Days.

HCFAR 87-3

Purpose: This Ruling announces HCFA's determination to follow the holdings of the courts of appeals for the Sixth, Eighth, Ninth, and District of Columbia Circuits with respect to claims that have been filed or could be filed within the jurisdiction of those circuits with respect to the validity of the labor/delivery room policy.

Citations: Section 186l(v) of the Social Security Act (42 U.S.C. 1395x(v)); 42 CFR 413.53; Provider Reimbursement Manual §2345; 52 FR 13873.

Pertinent History: The labor/delivery room policy, which is set forth in section 2345 of the Provider Reimbursement Manual, has been the subject of a substantial amount of litigation. This policy required that patients in a hospital's labor or delivery room at the census-taking hour be included in the inpatient count used to determine Medicare reimbursement for a hospital's general routine costs. The apportionment for general routine services is arrived at by multiplying the number of Medicare patient-days by the average per diem cost for all general routine services. The per diem figure is, in turn, computed by dividing total allowable routine costs by total inpatient days for the fiscal year. 42 CFR 413.53. Manual section 2345 clarifies this calculation by requiring that patients located in a hospital's labor or delivery room, or in any other ancillary area, at the

midnight census-taking hour be included in the count of total inpatient days for purposes of calculating the per diem cost of routine care.

Viewed in isolation, the policy of counting patients in labor and delivery rooms as inpatients advantages Medicare because of the relatively small number of

maternity patients who are Medicare beneficiaries. Other accounting and allocation conventions disadvantage Medicare, however, because of different patient and cost distributions. These variations tend to average out and in the aggregate result in a proper allocation of Medicare and non-Medicare costs. The issue in the litigation has been the extent to which these general averaging principles authorize the labor/delivery room policy.

The validity of the policy has been considered by the courts of appeals in eight judicial circuits. In each of the cases the court declined to uphold the policy based on the evidence in the record before it. The courts did, however, offer HCFA the opportunity to justify the policy with additional evidence demonstrating that the advantages to Medicare from the labor/delivery room policy were offset by disadvantages from other allocation policies. The courts divided into two groups on what the additional evidence would have to show.

Half of the courts established a strict test that the additional evidence would have to meet to validate the labor/delivery room policy. These courts-- the Sixth, Eighth, Ninth, and District of Columbia Circuits -- held that the additional evidence necessary to justify the policy would have to identify cost distortions disadvantaging Medicare in other hospital

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ancillary areas that offset the advantage to Medicare resulting from the labor/delivery room policy.[1] HCFA cannot adduce evidence that meets the strict test established by these courts.

The other courts of appeals that considered the labor/delivery room policy allowed the agency much broader latitude to prove through additional evidence that there are cost allocation distortions adverse to Medicare that offset the effects of the labor/delivery room policy.[2] Accordingly, HCFA has introduced evidence in new cases at the administrative level that demonstrates such an effect.

The initial decision in the District of Columbia Circuit, which adopted the strict test of what the additional evidence would have to prove, was ambiguous. The decision was not clear as to whether adoption of the strict test was based on the failure to raise the issue at the administrative level in that particular case, or whether the court was announcing a general principle that would apply in all cases. Recently, the

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[1] University of Michigan v. Bowen, No. 86-1816 (6th Cir. Feb. 26, 1987; Sioux Valley Hospital v. Heckler, 792 F.2d 715 (8th Cir. 1986); Mount Zion Hospital and Medical Center v. Heckler, 758 F.2d 1346 (9th Cir. 1985 ; International Philanthropic Hospital v. Heckler, 724 F.2d 1368 (9th Cir. 1984); St. Mary of Nazareth Hospital Center v. Heckler, 760 F.2d 1311 (D.C. Cir. 1985; St. Mary of Nazareth Hospital Center v. Schweiker, 718 F.2d 459 (D.C. Cir. 1983).

[2] Central DuPage Hospital v. Heckler, 761 F.2d 354 (7th Cir. 1985); Community Hospital of Roanoke Valley v. Heckler, 770 F.2d. 1257 (4th Cir. 1985); Beth Israel Hospital v. Heckler, 734 F.2d. 90 (1st Cir. 1984); Tarrant County Hospital District v. Heckler, No 83-1483 (5th Cir. 1984).

district court for the District of Columbia has interpreted the court of appeals' decision as intended to apply the strict test in all cases.[3]

We have determined to accept the district court's interpretation of the D.C. Circuit's prior holding. Consequently, there are four circuits in which the courts have established an evidentiary standard with respect to the validity of the labor/delivery room policy that we are unable to satisfy. The purpose of this Ruling is to announce our acquiescence in those decisions within the jurisdiction of the relevant circuits. We will dispose of claims pending in those circuits, or that could be filed in those circuits, by excluding labor/delivery room days from the calculation of inpatient days for the hospitals and cost years affected.

Since all providers can ordinarily obtain judicial review in the District of Columbia, this policy applies to all claims still at the administrative level, unless a court remand order or statutory provision necessitates that judicial review be sought elsewhere than in one of the four affected circuits, or unless the provider states that it intends to seek judicial review elsewhere.[4]

Pursuant to this Ruling, Medicare fiscal intermediaries will determine the amounts due and make appropriate payments through normal procedures. Claims must, of course, meet all other applicable requirements. This includes the requirement for data adequate to document the claimed costs. As the intermediaries may require, hospitals must furnish appropriate documentation to substantiate the number of days claimed (see section 1815(a) of the Social Security Act and 42 CFR 413.20, 413.24(a), (c)). Claims that are not disclosed on the cost report or an accompanying document (claims based on so-called "self-disallowed" costs) are not eligible for payment and remain ineligible under this Ruling.[5]

[3] Stormont-Vail Regional Medical Center v. Bowen, No. 85-4011 (D.D.C. Sept. 25, 1986).

[4] Our acquiescence in this instance respecting providers who could bring suit within the D.C. Circuit should not be viewed as an indication that any D.C. Circuit ruling on a Part A Medicare provider claim automatically results in a change in national Medicare policy. See generally United States v. Stauffer Chemical Co., 464 U.S. 165 (1984).

[5] Athens Community Hospital Inc. v. Schweiker, 686 F.2d 989 (D.C. Cir. 1982, revised 743 F.2d 1 (D.C. Cir. 1984); St. Mary of Nazareth Hospital v. Schweiker, 741 F.2d 1447 (D.C. Cir. 1984); Community Hospital of Roanoke Valley v. Heckler, 770 F.2d 1257 (4th Cir. 1985); Baptist Hospital East v. Bowen, 802 F.2d 860 (6th Cir. 1986); North Broward Hospital District v. Bowen, No. 85-6039 (11th Cir. Jan. 17, 1987); University of Cincinnati v. Bowen 809 F.2d 307 (6th Cir. 1987).

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Ruling: In the case of otherwise proper claims made by providers that can obtain judicial review of those claims in the Sixth, Eighth, Ninth, or District of Columbia Circuits, the labor/delivery room policy set forth in section 2345 of the Provider Reimbursement Manual will not apply, and reimbursement will be determined by excluding labor/delivery room days from the calculation of inpatient days.

Effective Date: April 9, 1987

Dated: April 9, 1987

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