



# **Additional Instructions to Hospitals on the Election of a Medicare-Supplemental Security Income (SSI) Component of the Disproportionate Share (DSH) Payment Adjustment for Cost Reports that Involve SSI Ratios for Fiscal Year (FY) 2004 and Earlier, or SSI Ratios for Hospital Cost-Reporting Periods for Patient Discharges Occurring Before October 1, 2004**

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## **PROVIDER TYPES AFFECTED**

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This MLN Matters Article is for hospitals participating in the Disproportionate Share Hospital (DSH) program and bill Medicare Administrative Contractors (MACs) for services provided to Medicare beneficiaries.

## **PROVIDER ACTION NEEDED**

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CR 10484 directs MACs to inform hospitals of the additional instructions for making an election for a particular fiscal period covered by the Centers for Medicare & Medicaid Services' (CMS) Ruling 1498-R (as modified by CMS Ruling 1498-R2). Please make sure your cost report staffs are aware of these instructions.

## **BACKGROUND**

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On April 28, 2010, the Administrator of CMS issued CMS Ruling 1498-R, which addressed administrative appeals on three different issues related to Medicare DSH payment, which included the following:

1. The Medicare-Supplementary Security Income (SSI) fraction data-matching process issue, and the method for recalculating the hospital's Medicare-SSI fraction by matching Medicare and SSI entitlement data

2. The exclusion from the Medicare fraction and the numerator of the Medicaid fraction of non-covered inpatient hospital days for patients entitled to Medicare Part A, including days for which the patient's Part A inpatient hospital benefits were exhausted
3. The exclusion from the DSH calculation of labor/delivery room (LDR) inpatient days. On April 22, 2015, the Administrator of CMS issued CMS Ruling 1498-R2, which effectively amended CMS Ruling 1498-R.

The modification and amendment of CMS Ruling 1498-R affects a change only with respect to the relief that is available for revised Medicare-SSI fractions, and the interaction between Medicare-SSI fractions suitably revised to address the data-matching process issue and the issue of Medicare Part A non-covered or exhausted benefit days ("dual-eligible non-covered days") for cost-reporting periods involving patient discharges before October 1, 2004.

Section 9105 of the Consolidated Omnibus Budget Reconciliation Act of 1985 provides that for discharges occurring on or after May 1, 1986, an additional payment must be made to Inpatient Prospective Payment System (IPPS) hospitals serving a disproportionate share of low-income patients. The additional payment is determined by multiplying the Federal portion of the Diagnosis-Related Group (DRG) payment by the DSH adjustment factor. (See 42 CFR 412.106, at <https://www.gpo.gov/fdsys/pkg/CFR-2013-title42-vol2/pdf/CFR-2013-title42-vol2-sec412-106.pdf>.)

Prior to the implementation of the fiscal year (FY) 2005 IPPS final rule, inpatient days were included in the numerator of the Medicare-SSI fraction only if the inpatient hospital days were "covered" under Medicare Part A and the patient was entitled to SSI benefits. Part A coverage of inpatient days alone was required for inclusion in the denominator of the Medicare-SSI fraction.

The FY 2005 IPPS final rule amended the DSH regulations by eliminating the requirement that Part A inpatient hospital days must be covered for such days to be included in the Medicare-SSI fraction and made clear that patient days were to be included in that fraction if the patient was entitled to Medicare Part A. See the FY 2005 IPPS final rule ([69 FR 49246](#)) (revising 42 CFR 412.106(b)(2)(i)).

Under this revised policy, the inpatient days of a person who was entitled to Medicare Part A are included in the numerator of the hospital's Medicare-SSI fraction (provided that the patient was also entitled to SSI at that time) and in the Medicare-SSI fraction denominator, regardless of whether the individual's inpatient hospital stay was covered under Part A or whether the patient's Part A hospital benefits were exhausted. The FY 2005 IPPS final rule revision to the DSH regulations was effective for patient discharges occurring on or after October 1, 2004 (69 FR 49099).

CMS issued Ruling 1498-R2 on April 22, 2015, and it is available at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/CMS-Rulings-Items/CMS1498-R2.html>.

CMS Ruling 1498-R2 provided notice of CMS' determination that CMS Ruling 1498-R shall be amended regarding its remedy for recalculation of certain Medicare DSH payment adjustments.

CMS Ruling 1498-R required the Provider Reimbursement Review Board (PRRB) and other Medicare administrative appeals tribunals to remand each qualifying appeal to the appropriate Medicare contractor.

CMS Ruling 1498-R further explained how CMS and Medicare contractors were to recalculate the provider's DSH adjustment resolving any of the three different DSH issues. CMS and the Medicare contractor also were to apply the provisions of CMS Ruling 1498-R on all three DSH issues, to each qualifying hospital cost reporting period where the contractor had not yet final settled the provider's Medicare cost report. CMS Ruling 1498-R2 is a modification and amendment of CMS Ruling 1498-R, but only in so far as CMS Ruling 1498-R2 requires an election with respect to the Medicare-SSI component of the DSH payment adjustment for cost reports that involve SSI ratios for Federal FY 2004 and earlier, or SSI ratios for hospital cost-reporting periods, but only for those patient discharges occurring before October 1, 2004.

CMS issued CR 9896 on December 16, 2016, which provided instructions to hospitals on exercising an election for cost-reporting periods subject to CMS Ruling 1498-R and the amendment in CMS Ruling 1498-R2.

Specifically, CR 9896 stated that a provider may elect whether to receive a suitably revised Medicare-SSI fraction based on "covered days," or "total days," for hospital cost-reporting periods that involve SSI ratios for Federal FY 2004 and earlier, or SSI ratios for hospital cost-reporting periods, but only for those patient discharges occurring before October 1, 2004. This election is available for hospital cost-reporting periods where the Medicare contractor has not yet final settled the provider's Medicare cost report, as well as appeals remanded to the contractor pursuant to CMS Ruling 1498-R. The election is also available for hospital cost-reporting periods previously reopened specifically on the Medicare-SSI fraction issue – neither CMS Ruling 1498-R nor the amendment in CMS Ruling 1498-R2 required reopening.

However, 42 CFR 412.106(b)(3) allows hospitals the opportunity to request to have its Medicare-SSI fraction realigned based on its cost-reporting period (as opposed to the Federal FY). Therefore, in lieu of an election, many hospitals requested that the Notice of Amount Program Reimbursement (NPR)/revised NPR based on its Federal FY for cost-reporting periods subject to this CR be delayed until they:

1. Review the patient-level detail supporting CMS' calculation of the revised ratios for the Federal FYs encompassing the hospitals' cost-reporting period(s), or
2. Request that the revised Medicare-SSI fraction be calculated for the discharge occurring in the hospitals' own cost-reporting period(s).

If a hospital wishes to review its patient-level data to determine if it wants to elect a realigned Medicare-SSI fraction, the hospital shall notify the Medicare contractor in writing within 30 days from the date of this CR so that issuance of an NPR/revised NPR with a revised Medicare-SSI fraction calculated based on the Federal FY is placed on hold. The hospital should notify the Medicare contractor within 180 calendar days of its request to place the cost report on hold as to whether it wants to:

- Submit a request for a realigned Medicare-SSI fraction, or

- Settle the cost report with a revised Medicare-SSI fraction based on the Federal FY.

If a hospital fails to meet this deadline, the Medicare contractor shall issue an NPR/revised NPR based on the higher (total or covered) of the Federal FY ratios for that hospital using the FY ratios from the CMS website for the relevant FYs. The provider may subsequently request alignment using normal timelines and procedures.

Also, if a hospital previously received an initial NPR/revised NPR with a revised Medicare-SSI fraction calculated based on the Federal FY, the hospital may request realignment, based on the revised Medicare-SSI fraction, within the normal timeframes.

## ADDITIONAL INFORMATION

The official instruction, CR10484, issued to your MAC regarding this change is available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2019Downloads/R2357OTN.pdf>.

If you have questions, your MACs may have more information. Find their website at <http://go.cms.gov/MAC-website-list>.

## DOCUMENT HISTORY

Date of Change	Description
September 6, 2019	Initial article released

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