HCFA Rulings

Department of Health and Human Services

Health Care Financing Administration

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HCFAR 84-1-1

MEDICARE PROGRAM

Provider Reimbursement Review Board

Provider Reimbursement Review Board Jurisdiction Over Appeals from Estimations of and Modifications to Base Year Costs Under the Prospective Payment System

HCFAR 84-1

Purpose: This Ruling provides public notice of the interpretation by HCFA of the regulations at 42 CFR 405.474(b)[1] and 42 CFR 405.1801 et seq. which implement the reviewing authority of the PRRB under section 1878(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395oo(a)(1)(A).

Citations: Section 1878 of the Social Security Act (42 U.S.C. 1395oo(a)) and 42 CFR 401.108 and 405.1801 et seq.; 49 FR 22413, May 29, 1984.

Pertinent History: During the transition period for introduction of the PPS, the payment amount made to hospitals for each discharge consists of two parts. The "Federal portion" is a percentage of the product determined by multiplying the weighting for the applicable diagnosis related group (DRG) by the appropriate standardized amount. The standardized amounts are based on the historical average costs of all hospitals in a designated grouping, i.e., throughout the nation, within a particular census division and within designated urban or rural areas. The other part of the payment for each discharge, the ''hospital-specific portion" is determined in the same way, except that the DRG weighting is multiplied by an amount reflecting the historical average costs of the particular hospital, rather than of a group of hospitals.

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The cost base for determining the hospital-specific portion is determined by using each hospital's cost per discharge (after adjustment for the complexity of its case mix) during the hospital's 12- month cost reporting period ending on or after

[1] 42 CFR 405.474(b) was redesignated May 29, 1985, as 42 CFR 412.71 through 412.73.

September 30, 1982, and before September 30, 1983 (42 CFR 405.474(b)(1)). [2] Costs incurred during this base year are determined by the intermediaries in accordance with usual Medicare rules. Costs that Medicare does not allow are excluded by the intermediaries, and are neither the basis for reimbursement for the base year nor the basis for determining a hospital's historical costs in connection with the PPS hospital-specific portion.

After the intermediary determines a hospital's base year costs, the intermediary adjusts the costs in certain respects for the purpose of adapting the costs to use in the prospective payment system. These modifications do not affect a hospital's reimbursement for the base year, but only the amount of its hospital-specific payment rate under PPS. The potential modifications involve nursing differential costs, direct medical education costs, capital-related costs, kidney acquisition costs, malpractice insurance costs, services paid under Medicare Part B during the base year but covered by the prospective payment amount, FICA taxes to be paid during the PPS period but not paid during base period, costs that were incurred for the purpose of increasing base year costs or

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revenues that have the effect of distorting base year costs as an appropriate basis for computing the hospital-specific rate, and higher costs that result from changes in hospital accounting principles initiated in the base year (42 CFR 405.474(b)).[3]

The intermediary's estimation of a hospital's base year costs and modifications thereto are reported to the hospital on HCFA Form 1007 prior to the beginning of its first cost reporting period under PPS. Ordinarily the estimation of base year costs appearing on this form will be identical to the determination of the base year costs in the NPR for the base year.

Questions have been raised as to the time at which the PRRB has jurisdiction to review the intermediaries' calculation of base year costs and the modifications thereto described above. In particular, the issue is whether the intermediary's estimation of base year costs and modifications thereto is reviewable at the time that this calculation is made and provided to each hospital prior to its becoming subject to PPS.

Actions that are reviewable by the PRRB are defined by statute and HCFA regulations. Section 1878 of the Social Security Act, 42 U.S.C. 1395oo, allows a hospital subject to PPS to appeal to the PRRB if it "has submitted such reports within such time as the Secretary may require in order to make payment" and is dissatisfied with a "final determination of the Secretary" as to the amount of payment under the PPS statutory provisions. HCFA's regulations make clear

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[2] 42 CFR 405.474(b)(1) was redesignated May 29, 1985, as 42 CFR 412.71(a).

[3] See Footnote 1.

that the determination triggering the right of hospitals under PPS to PRRB review "includes a determination of the total amount of payment due the hospital under that system for the hospital's cost reporting period covered by the determination" (42 CFR 405.1801(a)(2)-(3)). The regulations thus specify that issues related to payment amounts under PPS may not be appealed to the PRRB until the hospital seeking appeal has received its notice of amount of program reimbursement (NPR) for the PPS cost reporting period involved. Only the NPR determines the "total amount of payment due the hospital," as required by the regulations for PRRB review. (The regulations state that the appealable intermediary determination "includes" the determination of total PPS payments because the determination will also include reimbursement for capital costs and other items outside PPS.)

Moreover, in commenting on the interim PPS regulations published in the Federal Register on September 1, 1983 (48 FR 39751-39890), at least one commenter urged that the regulations be "clarified" to allow intermediary determinations regarding base year costs to be appealed to the PRRB immediately. The response to that and related comments in the preamble to the final regulations published January 3, 1984 (49 FR 279), stated:

> "Disputes that arise concerning prospective payments will be resolved under the administrative and judicial review procedures established in section 1878 of the Act and the Medicare regulations at 42 CFR Part 405, Subpart R. Under these procedures, a provider that is dissatisfied with the intermediary determination of the total amount of the program

> reimbursement due for a cost reimbursement period (as contained in a "Notice of Amount of Program Reimbursement" issued after the close of the period) may request a hearing…."

Thus, the preamble also makes clear that the PRRB has jurisdiction to hear issues with respect to PPS payment amounts only after an NPR has been issued following conclusion of the applicable cost reporting period.

Insofar as a hospital seeks PRRB review of the intermediary's determination of the hospital's costs during the base year cost reporting period itself, however, the hospital may appeal to the PRRB following receipt of the NPR applicable to such year. If the hospital is successful in its appeal, its reimbursement for the base year will be adjusted accordingly and the hospital's hospital-specific payment rate will be adjusted beginning with the first day of the hospital's first cost reporting period on or after the hospital's successful appeal. Thus, as a practical matter, initiation of PRRB review of an intermediary's determination for which an NPR is issued for the cost reporting period which serves as the base year will have the effect of appealing an intermediary's estimation of base year costs (but not including modifications thereto) before the conclusion of a hospital's first cost reporting period under PPS.

If a hospital seeks PRRB review of an intermediary's modifications to its base year costs, which were made by the intermediary not to affect base year reimbursement but for the purpose of establishing a hospital's PPS hospital-specific payment rate, appeal may not be sought immediately. Instead, as

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explained above, the PRRB lacks jurisdiction to review such actions until the hospital has received its NPR for its first PPS cost reporting period. Similarly, the PRRB lacks jurisdiction to review the estimation of a hospital's base year costs as stated on the HCFA Form 1007.

The prohibition on appealing issues related to PPS until after issuance of the NPR serves the substantial purpose of preventing piecemeal litigation. In the event that a hospital successfully appeals the modifications to its base year costs made by the intermediary for purposes of PPS, the results of the appeal will be retroactive to the time of intermediary's action (42 CFR 405.474(b)(2)(iv)).

Ruling: It is HCFA's Ruling that an intermediary's estimation of a hospital's base year costs and modifications thereto, made for purposes of determining the hospital-specific rate under PPS (HCFA Form 1007), is neither a final determination of program reimbursement nor a notice of the amount of program reimbursement as required by the statute and regulations. Accordingly, the PRRB has jurisdiction to review an intermediary's modifications to base year costs made for purposes of implementing the prospective payment system, or the estimate of those costs as stated on HCFA Form 1007, only after an NPR has been issued for the hospital's first cost reporting period under the prospective payment system.

Effective Date: May 29, 1984