PROVIDER REIMBURSEMENT REVIEW BOARD DECISION

2010-D52

PROVIDERS –
Southwest Consulting DSH
Medicare+Choice Days Groups
See Appendix A

Provider Nos.: See Appendix B

vs.

INTERMEDIARY –
BlueCross BlueShield Association/
NHIC Corp, c/o National Government
Services, Wisconsin Physicians Service,
and Noridian Administrative Services

DATE OF HEARING –
May 19, 2010

Cost Reporting Periods Ended:
1999 – 2004, See Appendix A

CASE NOs.: 04-0662GC, 04-2110GC, 05-0314GC, 05-0516GC, 05-0622GC, 05-1225G, 05-1459GC, 05-1547GC, 05-1604GC, 05-1791G, 05-1942GC, 05-1970G, 05-2158G, 05-2182G, 06-0013GC, 06-0056GC, 06-0057GC, 06-0091GC, 06-0241GC, 06-0259GC, 06-0292GC, 06-1432GC, 06-1730GC, 07-1719G, 07-2079G, 08-1851GC, 08-2369GC, 09-0512GC, 09-0681GC, 09-2284GC, 09-2296GC, 09-2319GC, 09-2321GC, 04-1905GC, and 05-0190GC

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ISSUE:

Whether Medicare+Choice (M+C) days should be included in the Medicaid fraction used to calculate the disproportionate share hospital (DSH) adjustment.

MEDICARE STATUTORY AND REGULATORY BACKGROUND:

This is a dispute over the amount of Medicare reimbursement due a provider of medical services.

The Medicare program was established to provide health insurance to the aged and disabled. *See* 42 U.S.C. §§ 1395-1395cc. The Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA), is the operating component of the Department of Health and Human Services (DHHS) charged with administering the Medicare program. CMS' payment and audit functions under the Medicare program are contracted to organizations known as fiscal intermediaries (FI) or Medicare administrative contractors (MAC). FIs and MACs[1] determine payment amounts due the providers under Medicare law and under interpretive guidelines published by CMS. *See* 42 U.S.C. § 1395h; 42 C.F.R. §§ 413.20 and 413.24.

Cost reports are required from providers on an annual basis with reporting periods based on the provider's accounting year. Those cost reports show the costs incurred during the fiscal year and the portion of those costs allocated to Medicare. 42 C.F.R. § 413.20. The intermediary reviews the cost report, determines the total amount of Medicare reimbursement due the provider and issues the provider a Notice of Program Reimbursement (NPR). 42 C.F.R. § 405.1803. A provider dissatisfied with the intermediary's final determination of total reimbursement may file an appeal with the Provider Reimbursement Review Board (Board) within 180 days of the issuance of the NPR. *See* 42 U.S.C. § 1395oo(a); 42 C.F.R. §§ 405.1835 - 405.1837.

Medicare DSH Payment

Part A of the Medicare Act covers "inpatient hospital services." Since 1983, the Medicare program has paid most hospitals for the operating costs of inpatient hospital services under the prospective payment system (PPS). *See* 42 U.S.C. § 1395ww(d)(l)-(5); 42 C.F.R. Part 412. Under PPS, Medicare pays predetermined, standardized amounts per discharge, subject to certain payment adjustments. *Id.*

The PPS statute contains a number of provisions that adjust reimbursement based on hospital-specific factors. *See* 42 U.S.C. § 1395ww(d)(5). This case involves the hospital-specific DSH adjustment, which requires the Secretary to provide increased PPS payments to hospitals that serve a significantly disproportionate number of low-income patients. *See* 42 U.S.C. § 1395ww(d)(5)(F)(i)(I); 42 C.F.R. § 412.106.

[1] FIs and MACs are hereinafter referred to as intermediaries.

A hospital may qualify for a DSH adjustment based on its disproportionate patient percentage (DPP). *See* 42 U.S.C. §§ 1395ww(d)(5)(F)(i)(I) and (d)(5)(F)(v); 42 C.F.R. § 412.l06(c)(l). As a proxy for utilization by low-income patients, the DPP determines a hospital's qualification as a DSH, and it also determines the amount of the DSH payment to a qualifying hospital. *See* 42 U.S.C. §§ 1395ww(d)(5)(F)(iv) and (vii)-(xiii); 42 C.F.R. § 412.106(d).

The DPP is defined as the sum of two fractions expressed as percentages. *See* 42 U.S.C. § 1395ww(d)(5)(F)(vi). Those two fractions are referred to as the "Medicare/SSI" fraction and the "Medicaid" fraction. Both of these fractions consider whether a patient was "entitled to benefits under part A."

The statute defines the Medicare/SSI fraction as:

> the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were *entitled to benefits under part A* of this subchapter and were entitled to supplemental security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were *entitled to benefits under part A* of this subchapter....

42 U.S.C. § 1395ww(d)(5)(F)(vi)(I) (emphasis added). The Medicare/SSI fraction is computed annually by CMS, and the Medicare fiscal intermediaries use CMS' calculation to compute a hospital's DSH payment adjustment. 42 C.F.R. § 412.106(b)(2)-(3).

The statute defines the Medicaid fraction as:

> the fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX [the Medicaid program], but who were *not entitled to benefits under part A of this subchapter,* and the denominator of which is the total number of the hospital's patient days for such period.

42 U.S.C. § 1395ww(d)(5)(F)(vi)(II) (emphasis added). The fiscal intermediary determines the number of the hospital's patient days of service for which patients were eligible for Medicaid but not entitled to Medicare part A, and divides that number by the total number of patient days in the same period. 42 C.F.R. § 412.l06(b)(4).

Medicare+Choice Program

The Medicare program permits its beneficiaries to receive services from managed care entities. The managed care statute implementing payments to health maintenance

organizations (HMOs) and competitive medical plans (CMPs) is found at 42 U.S.C. § 1395mm. The statute at 42 U.S.C. § 1395mm(a)(5) provides for "payment to the eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter …" Inpatient hospital days for Medicare beneficiaries enrolled in HMOs and CMPs prior to 1999 are referred to as Medicare HMO patient care days.

In 1997, Congress amended the Medicare statute by adding a new part C for Medicare beneficiaries enrolled in managed care organizations after 1999. *See* Balanced Budget Act of 1997 (BBA), Pub. L. No. 105-33, §4001, 111 Stat. 251, 270 (codified at 42 U.S.C. § 1395w-21). Part C governs the Medicare+Choice (M+C) program. This statute provides that a Medicare beneficiary may elect to receive Medicare benefits through one of two means:

> Subject to the provisions of this section, each Medicare+Choice eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits (other than qualified prescription drug benefits) under this subchapter --
>
> (A) through the original [M]edicare fee-for-service program under parts A and B of this subchapter, or
>
> (B) through enrollment in a Medicare+Choice plan under this part…

42 U.S.C. § 1395w-21(a)(1) (emphasis added); *see also* 42 C.F.R. § 422.50; 63 Fed. Reg. 34968 (June 26, 1998). A "Medicare+Choice eligible individual" means an individual who is entitled to benefits under part A and enrolled under part B of the Medicare statute. 42 U.S.C. § 1395w-21 (a)(3)(A).

Once a beneficiary elects to enroll in an M+C plan, however, the beneficiary receives Medicare benefits under part C and the Secretary makes payment to the contracted M+C plan. *See* 42 U.S.C. § 1395w-21(a)(1)(B), (i). Subject to certain exceptions that are not pertinent here, the statute requires the Secretary to make payments to the M+C plan under part C "instead of the amounts which (in the absence of the contract) would otherwise be payable under parts A and B [of the Medicare statute] for items and services furnished to the individual" and provides that "only the Medicare+Choice organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual." 42 U.S.C. § 1395w-21(i)(l)-(2) (emphasis added).

More recently, the Medicare Modernization Act of 2003 (MMA) (P.L. No. 108-173) established the Medicare Advantage (MA) program as part C of Title XVIII of the Act replacing the M+C program. This change is effective for cost reporting periods subsequent to September 30, 2004.

CMS Policy for Managed Care Days in DSH Calculation

In 1990, CMS published a statement in the Federal Register indicating that Medicare HMO days had been counted in the Medicare Fraction. 55 Fed. Reg. 35990, 35994 (Sept.

4, 1990). It states in relevant part:

> *Comment:* One commenter believes that the disproportionate share adjustment calculation should be expanded to include days that Medicare patients utilize health maintenance organizations (HMOs) since these beneficiaries are entitled to Part A benefits.
>
> *Response:* Based on the language of section 1886(d)(5)(F)(vi) of the Act, which states that the disproportionate share adjustment computation should include "patients who were entitled to benefits under Part A", we believe it is appropriate to include the days associated with Medicare patients who receive care at a qualified HMO. Prior to December 1, 1987, we were not able to isolate the days of care associated with Medicare patients in HMOs and, therefore, were unable to fold this number into the calculation. However, as of December 1, 1987, a field was included on the Medicare Provider Analysis and Review (MEDPAR) file that allows us to isolate those HMO days that are associated with Medicare patients. Therefore, since that time, we have been including HMO days in SSI/Medicare percentage.

Id.

CMS did not publish any further guidance regarding Medicare managed care days until it addressed the treatment of M+C patient days in the DSH calculation in 2003 and 2004. In proposed regulations, 68 Fed. Reg. 27154, 27208 (May 19, 2003), CMS indicated that M+C days should not be counted in the Medicare fraction. CMS also proposed to permit hospitals to count these days in the numerator of the Medicaid fraction when an M+C enrollee is also eligible for Medicaid. It stated in relevant part:

> 8. Medicare+Choice (M+C) Days
>
> Under § 422.1, an M+C plan "means health benefits coverage offered under a policy or contract by an M+C organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the service area of the M+C plan." Generally, each M+C plan must provide coverage of all services that are covered by Medicare Part A and Part B (or just Part B if the M+C plan enrollee is only entitled to Part B).
>
> We have received questions whether patients enrolled in an M+C Plan should be counted in the Medicare fraction or the Medicaid fraction of the DSH patient percentage calculation. The question stems from whether M+C plan enrollees are entitled to benefits under Medicare Part A since M+C plans are administered through Medicare Part C.

> We note that, under § 422.50, an individual is eligible to elect an M+C plan if he or she is entitled to Medicare Part A and enrolled in Part B. However, once a beneficiary has elected to join an M+C plan, that beneficiary's benefits are no longer administered under Part A.
>
> Therefore, we are proposing to clarify that once a beneficiary elects Medicare Part C, those patient days attributable to the beneficiary should not be included in the Medicare fraction of the DSH patient percentage. These patient days should be included in the count of total patient days in the Medicaid fraction (the denominator), and the patient's [sic] days for the M+C beneficiary who is also eligible for Medicaid would be included in the numerator of the Medicaid fraction.

Id.

In 2004, however, CMS reconsidered its position and decided to count M+C days in the Medicare fraction. 69 Fed. Reg. 48916, 49099 (Aug. 11, 2004). It stated in relevant part:

> 4. Medicare+Choice (M+C) Days
>
> Under existing § 422.1, an M+C plan means "health benefits coverage offered under a policy or contract by an M+C organization that includes a specific set of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the service area of the M+C plan." Generally, each M+C plan must provide coverage of all services that are covered by Medicare Part A and Part B (or just Part B if the M+C plan enrollee is only entitled to Part B).
>
> We have received questions whether the patient days associated with patients enrolled in an M+C Plan should be counted in the Medicare fraction or the Medicaid fraction of the DSH patient percentage calculation. The question stems from whether M+C plan enrollees are entitled to benefits under Medicare Part A since M+C plans are administered through Medicare Part C.
>
> We note that, under existing regulations at § 422.50, an individual is eligible to elect an M+C plan if he or she is entitled to Medicare Part A and enrolled in Part B. However, once a beneficiary has elected to join an M+C plan, that beneficiary's benefits are no longer administered under Part A. In the proposed rule of May 19, 2003 (68 FR 27208), we proposed that once a beneficiary elects Medicare Part C, those patient days attributable to the beneficiary would not be included in the Medicare fraction of the DSH patient percentage. Under our proposal, these patient days would be included in the Medicaid fraction. The patient days of dual-eligible M+C beneficiaries (that is, those also eligible for Medicaid)

> would be included in the count of total patient days in both the numerator and denominator of the Medicaid fraction.
>
> *Comment:* Several commenters indicated that they appreciated CMS's attention to this issue in the proposed rule. The commenters also indicated that there has been insufficient guidance on how to handle these days in the DSH calculation. However, several commenters disagreed with excluding these days from the Medicare fraction and pointed out that these patients are just as much Medicare beneficiaries as those beneficiaries in the traditional fee-for-service program.
>
> *Response:* Although there are differences between the status of these beneficiaries and those in the traditional fee-for-service program, we do agree that once Medicare beneficiaries elect Medicare Part C coverage, they are still, in some sense, entitled to benefits under Medicare Part A. We agree with the commenter that these days should be included in the Medicare fraction of the DSH calculation. Therefore, we are not adopting as final our proposal stated in the May 19, 2003 proposed rule to include the days associated with M+C beneficiaries in the Medicaid fraction. Instead, we are adopting a policy to include the patient days for M+C beneficiaries in the Medicare fraction. As noted previously, if the beneficiary is also an SSI recipient, the patient days will be included in the numerator of the Medicare fraction. We are revising our regulations at § 412.106(b)(2)(i) to include the days associated with M+C beneficiaries in the Medicare fraction of the DSH calculation.

Id.

In the instant case, the parties dispute where the M+C days should be counted in the DSH calculation.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

This case involves 35 group appeals, collectively known as Southwest Consulting DSH Medicare+Choice Days Groups (the Providers). All of the Providers in each of the groups are acute care facilities that received payment under Medicare part A for services to Medicare beneficiaries for cost reporting periods from 1999 through 2004. All of the cost reporting periods at issue ended on or before September 30, 2004. The Providers either received a Medicare DSH payment for the periods at issue or contend that they should receive a DSH payment. The Providers seek to include in the numerators of the Medicaid fractions the days attributable to patients who were eligible for Medicaid and enrolled in an M+C managed care plan during their inpatient hospital stays. The Intermediaries for each of the Providers did not include those days in the numerators of the Medicaid fractions. The Providers have appealed those determinations and met the jurisdictional requirements of 42 U.S.C. § 1395oo(a).

The Providers were represented by Christopher L. Keough, Esq. of King & Spalding, L.L.P. The Intermediaries were represented by Arthur E. Peabody, Jr., Esq. of BlueCross BlueShield Association.

PROVIDERS' CONTENTIONS:

The Providers contend that patients who are enrolled in an M+C plan under Medicare part C are not "entitled to benefits under part A," for purposes of the DSH payment calculation. Therefore the exclusion of the M+C days at issue from the numerator of the Providers' Medicaid fractions is incorrect and must be reversed for seven different reasons.

First, the Providers contend that the Intermediaries' exclusion of the M+C days at issue is contrary to the plain meaning of the DSH statute. The district courts in *Northeast Hospital* and *Metropolitan Hospital* recently held that, as used in the Medicare DSH statute, the term "entitled to benefits under part A" means the right to have payment made under part A for the inpatient hospital days in question. *See Northeast Hosp. Corp. v. Sebelius*, 699 F.Supp.2d 81, 93 (D.D.C. 2010); *Metropolitan Hosp., Inc. v. U.S. Dept. of Health and Human Services*, 702 F.Supp.2d 808, 823 (W.D. Mich. 2010). For the period at issue here, a beneficiary could elect to receive Medicare benefits either through the original fee-for-service program under Medicare parts A and B, or through enrollment in an M+C plan under part C. 42 U.S.C. § 1395w-21(a)(I); 42 C.F.R. § 422.50. However, once the individual elected to enroll under part C, he or she is not entitled to have payment made on his or her behalf under Medicare part A; instead payment is made under part C. *ld.; see also* 68 Fed. Reg. 27154, 27208 (May 19, 2003).

Second, the Providers contend that the Secretary has adopted and applied two diametrically opposed interpretations of the same term, "entitled", that is used in a single sentence of the DSH statute. 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I). The Secretary interprets the statutory term "entitled" as it relates to SSI benefits very narrowly to include only those days for patients who were entitled to have SSI benefits paid to them on those days. *See* 75 Fed. Reg. 50041, 50280 (Aug. 16, 2010). In contrast, the Secretary interprets this term as it relates to benefits under Medicare part A very broadly to include anyone who is eligible to enroll in Medicare part A, regardless of whether Medicare makes payment. The Providers contend that the Secretary's approach of applying different interpretations to the same term used in the same provision of the same statute is arbitrary and capricious agency action and must be reversed. *See Walter O. Boswell Mem'l Hosp. v. Heckler*, 749 F.2d 788, 799 (D.C. Cir. 1984).

Third, the Providers contend that the Secretary's position impermissibly conflates two statutory terms – "eligible" and "entitled" – by construing the DSH statute to mean that M+C beneficiaries remain entitled to Medicare part A simply by meeting the eligibility criteria for enrolling in Medicare part A. In prior litigation as to the meaning of these terms, four consecutive federal appellate courts concluded that the Secretary cannot properly construe them to have the same meaning. *See Jewish Hosp. Inc., v. Sec'y of Health and Human Servs.*, 19 F.3d 270, 274-75 (6th Cir. 1994); *Cabell Huntington Hosp.*

v. Shalala, 101 F.3d 984,988 (4th Cir. 1996); *Legacy Emanuel Hosp. and Health Ctr. v. Shalala,* 97 F.3d 1261, 1265-66 (9th Cir. 1996); *Deaconess Health Servs. Corp. v. Shalala,* 83 F.3d 1041 (1996) (per curiam), *aff'g* 912 F. Supp. 438, 447 (E.D. Mo. 1995). The Providers contend that the Secretary is once again conflating the terms "eligible" and "entitled" in the cases at issue here, but following the holdings of the Fourth, Sixth and Ninth Circuit Courts of Appeals, the term "eligible" cannot be construed to mean the same thing as "entitled."

Fourth, the Providers contend that the Secretary's interpretation of the phrase "entitled to benefits under part A" impermissibly conflicts with the Secretary's interpretation of that same phrase used in the same context in the next subparagraph of the statute. The Secretary has interpreted this phrase, for purposes of 42 U.S.C. § 1395ww(d)(5)(G), to mean that an individual's entitlement to benefits under part A ceases when the individual has exhausted his or her right to have payments made under part A. *See* 55 Fed. Reg. 35990, 35996 (Sept. 4, 1990) ("Entitlement to payment under part A ceases after the beneficiary has used 90 days in a benefit period and has either exhausted the lifetime reserve days or elected not to use available lifetime reserve days."). The Providers argue that the Secretary's failure to provide any explanation for her inconsistent interpretation of this statutory phrase used in adjacent provisions of the Medicare statute is arbitrary and capricious. *See Northeast Hosp.,* 699 F.Supp.2d at 94-95.

Fifth, the Providers contend that even if the plain language of the DSH statute did not clearly provide that M+C patients are "entitled to benefits under part A," Congress has manifested its intent elsewhere in the statute that M+C patients should not be regarded as patients who are "entitled to benefits under part A." When Congress enacted the Balanced Budget Act of 1997, it clearly expressed its intent that M+C patient days should *not* be considered days with respect to which payment may be made under part A. Otherwise, there would have been no need for Congress to provide, through an addition to the BBA, an additional graduate medical education payment for teaching hospitals with respect to M+C enrollees. *See* 42 U.S.C. § 1395ww(d)(II), (h)(3)(D).

Sixth, the Providers contend that the Intermediaries' application of CMS' 2004 change in policy is contrary to the DSH regulation that was in effect for the periods at issue. From the inception of the DSH payment throughout the periods at issue here, the Secretary interpreted the statutory phrase "entitled to benefits under part A" to mean paid by Medicare part A. Accordingly, under the regulation in effect during the periods at issue, M+C days cannot be considered to be days for which a patient is "entitled to benefits under part A" because these days are not days for which the patient is entitled to have Medicare part A payment made. Indeed, ever since the DSH regulation was initially promulgated in 1986, the Secretary has interpreted "entitled" to mean "paid." *See* 51 Fed. Reg. 31454, 31460-61 (Sept. 3, 1986). Further, in 1990, she again interpreted "entitled" to mean "paid," for purposes of the very next subparagraph of the statute, concerning payment to Medicare dependent hospitals. *See* 55 Fed. Reg. 35990, 35996 (Sept. 4, 1990). In addition, in litigation challenging the Secretary's original interpretation of "eligible," the Secretary represented to multiple Federal courts of appeals that "entitled" means "paid." *See* Provider Ex. 37-39. Further, that same interpretation of entitled was reiterated by the

Secretary in a 1996 decision affirming that patient days that were billed to and paid by Medicaid after a patient had exhausted Medicare part A benefits may be included in the numerator of the Medicaid fraction. *See Presbyterian Med. Ctr. of Philadelphia v. Aetna Life Ins. Co.*, CMS Administrator, November 29, 1996, Medicare & Medicaid Guide (CCH) ¶ 45,032, at 4.

Seventh, the Providers contend that M+C days were never counted in the Medicare/SSI fraction as days for which those patients were "entitled to benefits under part A" for any periods before October 1, 2004. *See* Tr. at 148-162. In addition, the Providers contend that the impact of adding M+C days to the Medicare/SSI fraction and excluding Medicaid-eligible days for M+C patients from the Medicaid fraction is, on average, $457,000 per hospital per year, or $775 million per year for hospitals nationwide. *See* Tr. at 163-180. Further, the Providers contend that when other types of dual eligible days are taken into account, such as days for patients who have exhausted their benefits under part A, the negative impact of including dual eligible days in the Medicare/SSI fraction as opposed to the Medicaid fraction is even more pronounced. *See* Tr. at 186-197.

Finally, the Providers argue that the agency's actual practice of never counting M+C days in the SSI fraction confirms its interpretation of the DSH regulation in effect during the period at issue as excluding M+C patient days from a hospital's number of days attributable to patients who were "entitled to benefits under part A." Medicare HMO days were never counted by CMS in the Medicare/SSI fraction, except by mistake. *See, e.g., Baystate Med. Ctr. v. Mutual of Omaha Ins. Co.*, PRRB Dec. No. 2006-D20, slip op. at 39-40 (Mar. 17, 2006), Provider Ex. 40; *see also* Provider Ex. 41, 45. Thus, the Providers contend that, having established her prior interpretation of the term "entitled" as meaning "paid" by Medicare part A, the Secretary was required to follow notice and comment rulemaking in order to change that interpretation of the DSH regulation. *See Monmouth Med. Ctr. v. Thompson*, 257 F.3d 807, 814 (D.C. Cir. 2001).

INTERMEDIARIES' CONTENTIONS:

The Intermediaries note that the Board has ruled in favor of the Intermediary and CMS' position to exclude M+C days from the Medicaid fraction, finding that such days should be included in the Medicare fraction of the DSH calculation. *See e.g., St. Joseph's Hospital v. BlueCross BlueShield Association*, 2007 WL 3341630; *Beverly Hospital v. BlueCross BlueShield Association*, 2008 WL 7256679; and *SRI 1998 DSH Medicare Part C Days Group v. BlueCross BlueShield Association, 2009 WL 3231754*. The CMS Administrator has consistently upheld the Board. *See e.g., St. Joseph's Hospital v. BlueCross BlueShield Association*, 2007 WL 4861952; *Beverly Hospital v. BlueCross BlueShield Association*, 2008 WL 6468518[2]; and *SRI 1998 DSH Medicare Part C Days Group v. BlueCross BlueShield Association, 2009 WL 4522056*.

[2] The federal district court reversed. *See Northeast Hosp. Corp. v. Sebelius*, 699 F.Supp.2d 81 (D.D.C. 2010) (finding that selection of part C by a beneficiary makes the beneficiary no longer eligible for Part A or traditional Medicare; therefore the day should be included in the numerator of the Medicaid fraction).

The Intermediaries contend CMS policy has consistently dictated that Medicare managed care days are to be included in the Medicare fraction, and not in the Medicaid fraction. *See* 55 Fed. Reg. 35990, 35994 (Sept. 4, 1990). With respect to M+C beneficiaries, CMS considered including these days in the Medicaid fraction, but following debate, CMS determined that the Medicare fraction should remain the proper placement for such days. In the August 11, 2004 Final Rule, CMS indicated that even though Medicare beneficiaries may elect Medicare part C coverage, they are still, in some sense, entitled to benefits under Medicare part A and should be included in the Medicare fraction of the DSH calculation. *See* 63 Fed Red. 48916, 49099 (Aug. 11, 2004).

The Intermediaries contend that excluding M+C days from the Medicaid fraction is consistent with the statutory and regulatory scheme. The Intermediaries state that an M+C enrollee is, by definition, entitled to benefits under Medicare part A. 42 U.S.C. § 1395w-21(a)(3)(A) ("In this title [42 U.S.C. § 1395 et seq.], … the term 'Medicare+Choice eligible individual' means an individual who is entitled to benefits under part A and enrolled under part B."). The Medicare statute also provides for automatic entitlement to Medicare part A benefits for "[e]very individual who … has attained the age of 65, and is entitled to monthly insurance benefits [i.e., monthly Social Security benefits] under section 402 of this title." 42 U.S.C. § 426(a). Therefore, based on a plain reading of the applicable statutory provision, the statutory phrase in the Medicaid proxy "but who were not entitled to benefits under Medicare part A" forecloses the inclusion of the days at issue in the numerator of the Medicaid proxy.

The Intermediaries also argue that there is nothing in the statute to suggest that whether Medicare directly pays for a day instead of purchasing coverage from an HMO affects entitlement to Medicare part A. Because an individual who is enrolled in a Medicare HMO for a particular period would still be over 65 and entitled to monthly Social Security benefits, that individual is still "entitled to" Medicare part A benefits under the statute. Further, the statute speaks solely in terms of entitlement of the beneficiary, not payment to the provider.

Finally, the Intermediaries contend that *Northeast Hospital*'s reliance on inconsistent interpretations of "entitled to benefits pursuant to part A" is misplaced since it ignores the context of the commentary, i.e., the determination of whether a facility is a Medicare dependent hospital.

FINDINGS OF FACT, CONCLUSION OF LAW AND DISCUSSION:

After consideration of the Medicare law and guidelines, the parties' contentions and evidence presented, the Board finds and concludes that the M+C days should be included in the Medicaid fraction used to calculate the DSH adjustment.

Under the managed care statute 42 U.S.C. § 1395mm, as well as the Balanced Budget Act of 1997, 42 U.S.C. § 1395w-21, a beneficiary must first be entitled to benefits under

Medicare part A to enroll in a Medicare managed care plan.[3] However, once enrolled in the plan, that beneficiary would no longer be entitled to benefits under parts A or B. The statute provides that an M+C eligible beneficiary can elect to receive benefits through the traditional fee-for-service program under parts A and B, or enroll in an M+C plan under part C. *See* 42 U.S.C. § 1395w-21(a)(1). Significantly, the Medicare statute uses the disjunctive "or," stating that once that election is made, the beneficiary is entitled to receive benefits under one or the other, but not both. Hence, if a beneficiary is enrolled in an M+C plan, that beneficiary is not entitled to benefits under Medicare part A.[4]

The intent of Congress is also clear when one reviews the statute at 42 U.S.C. § 1395w-21(i)(1) which states that payments under a contract with an M+C organization with respect to an individual electing an M+C plan shall be instead of the amounts which would otherwise be payable under parts A and B for services furnished to the individual. Similar to the election of benefits, the payments made under the M+C plan replace payments under parts A and B. Therefore, once enrolled in the M+C program, the beneficiary is not entitled to payments under Medicare part A.

The Board finds that the plain language of the Medicare DSH statute requires the inclusion of M+C days in the numerator of the Medicaid fraction. *See* 42 U.S.C. § 1395ww(d)(5)(F)(vi). The Board agrees with the holdings of the two district courts that have recently addressed this precise issue, the meaning of the phrase, "entitled to benefits under part A," as used in the DSH statute. The courts in *Northeast Hospital* and *Metropolitan Hospital* have both held that, as used in the context of the Medicare DSH statute, the term "entitled to benefits under part A" means the right to have payment made under part A for the inpatient hospital days in question. *See Northeast Hosp.*, 699 F.Supp.2d at 93; *Metropolitan Hosp.*, 702 F.Supp.2d at 823. The Board agrees with the Providers' argument and the district court's holding in *Northeast Hospital* that once an individual has enrolled in a Medicare+Choice plan under part C, he or she is no longer "entitled to benefits under part A," because he or she is no longer entitled to have payment made under part A for the days at issue. *See Northeast Hosp.*, 699 F.Supp.2d at 93 (finding that Congress has "explicitly concluded that M+C patients are not 'entitled to benefits under [Medicare] part A' as that phrase is defined in the Medicaid [sic] statute").

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[3] In prior decisions, the Board found the statutory language dispositive of the question because to enroll in a Medicare+Choice plan under part C, a beneficiary was first required to be "entitled" to Part A benefits. *See e.g. QRS 1994 DSH Managed Care and Medicaid Eligible Days Group v. Blue Cross Blue Shield Association/Noridian Administrative Services*, PRRB Dec. No 2009-D3, Dec. 17, 2008, *declined rev.* CMS Administrator, Feb 6, 2009. The Board is now convinced it stopped too short in its analysis of the statute. As the District Court in *Northeast Hospital* pointed out, the statute also expressly links "entitlement" to the right to receive payment and further provides that once a beneficiary elects a Medicare +Choice plan, payment is no longer made under part A, but is made under part C. 699 F.Supp.2d. at 81.

[4] In the August 2004 Final Rule, which was published after most of the fiscal years at issue in this case, CMS indicated that though Medicare beneficiaries may elect Medicare part C coverage, they are still, "in some sense" entitled to benefits under Medicare part A and should be included in the Medicare fraction. *See* 69 Fed. Reg. 48916, 49099 (Aug. 11, 2004). CMS did not articulate how, or in what sense beneficiaries might be covered by both parts A and C. However, the clear language of the statute cannot be overcome by commentary made by CMS in the preamble to a final rule or in its policy shifts.

The Board can discern no rational explanation for CMS' inconsistent interpretation of the term "entitled" as used in the same sentence within the DSH statute. On one hand, CMS states that SSI beneficiaries are "entitled to supplemental security income benefits" only when entitled to payment for the specific days at issue, while at the same time finding that any individual who is eligible for benefits under Medicare part A is also "entitled to benefits under part A," regardless of whether or not Medicare actually makes payment for the days at issue.

This same unexplained distinction is also evident in CMS' treatment of part A days for determining a hospital's payment for graduate medical education (GME). The M+C days that CMS insists are part A days for purposes of the DSH payment, are treated as *not* being part A days for purposes of the GME payment. The Board agrees with the Providers that Congress clearly manifested its intent in the GME statute that M+C patients should not be regarded as patients who are "entitled to benefits under part A." Otherwise, there would have been no need for Congress to establish additional GME and IME payments for patients enrolled in M+C plans.

Similarly, CMS' current interpretation of "entitled to benefits under part A," as used in the DSH statute under subparagraph (F) of section I395ww(d)(5), conflicts with the agency's interpretation of the same phrase as used in the very next subparagraph (G) of the statute. Under subsection G, CMS interprets entitlement to cease once payment cannot be made on the beneficiary's behalf. *See* 55 Fed. Reg. 35990, 35996 (Sept. 4, 1990).

The district court in *Northeast Hospital* found CMS' failure to acknowledge or explain its departure from established agency precedent to be arbitrary and capricious. *See* 699 F.Supp.2d at 94-95; *see also FCC v. Fox TV Stations, Inc.*, 129 S.Ct. 1800, 1811 (2009) (agencies "may not ... depart from a prior policy *sub silentio* or simply disregard rules that are still on the books"); *accord Dillmon v. Nat'l Trans. Safety Bd.*, 588 F.3d 1085, 1089 (D.C. Cir. 2009) ("Reasoned decision making, therefore, necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from established precedent.").

The Board further finds that CMS' current interpretation of the DSH statute applied in these cases improperly conflates the statutory terms "entitled" and "eligible" as used in a single sentence within the DSH statute. CMS' current interpretation construes these terms to have the same meaning, violating the elementary principle of statutory construction that Congress does not intend the same meaning when it uses different terms in different parts of the same statute. *See, e.g., Russello* v. *United States*, 464 U.S. 16, 23 (1983). The Board agrees with the *Metropolitan Hospital* court's holding that the statutory terms "entitled" and "eligible" are "conceptually and practically distinct and not to be used interchangeably." 702 F.Supp.2d at 825. The distinctions between these two terms and the impropriety of conflating them as having the same meaning has been established for over a decade. *See Jewish Hosp. Inc*., 19 F.3d at 274-75; *Cabell Huntington Hosp.*, 101 F.3d at 988 (4th Cir. 1996); *Legacy Emanuel Hosp. and Health Ctr.*, 97 F.3d at 1265-66 (9th Cir. 1996).

The Board finds that the exclusion of the M+C days at issue is contrary to the DSH regulation that was in effect during the periods at issue. The regulation in effect interpreted the statutory phrase "entitled to benefits under part A" to mean "covered" by Medicare part A, *see, e.g.*, 42 C.F.R. § 412.106(b)(2)(i) (1997), and the part A coverage regulations define "covered" to mean "services for which the law and regulations authorize Medicare payment." 42 C.F.R. § 409.3 (1997). As the Providers correctly point out, this interpretation of the regulation is consistent with the Secretary's statements of intent at the time she adopted the DSH regulation in 1986, 51 Fed. Reg. 31454, 31460-61, in subsequent litigation before multiple federal courts of appeals, *see* Provider Ex. 37-39, and in the Administrator's 1996 decision in *Presbyterian Med. Ctr. of Philadelphia v. Aetna Life Ins. Co.*, CMS Administrator, November 29, 1996, Medicare and Medicaid Guide (CCH) ¶45,032, at 4. This is also consistent with CMS's calculation of the Medicare/SSI fraction for periods before the 2004 change in policy. 69 Fed. Reg. 48916, 49098 (Aug. 11, 2004).

The Providers bolster their argument on how CMS itself interpreted the regulation in effect prior to 2004 with their consultant's analyses of hundreds of cost reports for fiscal years 1999 to 2004. The Providers contend these analyses demonstrate CMS' actual practice of never counting M+C days in the SSI fraction except rarely, and then by mistake. *See* Tr. at 148-162. The Intermediaries did not directly challenge the evidence even though the Board kept the record open to allow rebuttal evidence or further cross examination. *See* Tr. 35-38; 232-235. Rather, the Intermediaries argued that how CMS implemented the regulation was irrelevant to the legal question of where the M+C days belong in the DSH equation. *See* Tr. at 21.

The Board finds the evidence persuasive that CMS' actual practice was to not count the M+C days in the SSI fraction prior to 2004. When this is combined with CMS' numerous statements on not counting the days as part A days, we are also persuaded that CMS does not have a long-standing policy of counting part C days as part A days for DSH purposes. The Board nevertheless concludes that CMS' conflicting interpretations, its motivation, or whether or not the Providers would benefit from a particular interpretation are not dispositive of the statutory construction question at the heart of this dispute. We find that question to have been properly answered by the federal court cases discussed above.[5]

[5] The Board also considered whether these cases are within the scope of the Secretary's Ruling No.: CMS-1498-R (April 28, 2010). That Ruling provides that certain categories of days must be recalculated for DSH under the policy set out in the Ruling and that the Board's jurisdiction to take any further action on the case is suspended except for remanding the case. Although the category of days in issue here may arguably be included as "non-covered" days, the Ruling does not explicitly include M+C or other managed care days in its directive of those to be remanded, and remand under the Ruling was not raised by the Intermediary in any of the proceedings.

DECISION AND ORDER:

The Intermediaries improperly excluded the Medicare+Choice days at issue from the numerator of the Medicaid fraction used to calculate the DSH payment. The Intermediaries are directed to revise the Providers' DSH calculations for each cost reporting period under appeal.

BOARD MEMBERS PARTICIPATING:

Suzanne Cochran, Esquire
Yvette C. Hayes
Keith E. Braganza, CPA
John Gary Bowers, CPA

FOR THE BOARD:

Suzanne Cochran, Esq.
Chairperson

DATE: September 30, 2010

APPENDIX A
SUMMARY OF GROUPS

	Case Number	Group Name	FYEs	No. of Providers	Appendix Reference
1	04-0662GC	Lifespan Southwest Consulting 1999 DSH Medicare+Choice Days Group	09/30/1999	3	B-1
2	04-2110GC	Iasis Healthcare 2000 DSH Medicare+Choice Days Group	05/31/2000 09/30/2000 12/31/2000	4	B-1
3	05-0314GC	CHI 2000 DSH Medicare+Choice Days Group	06/30/2000 08/31/2000	7	B-1
4	05-0516GC	CHI 2001 DSH Medicare+Choice Days Group	06/30/2001	13	B-1
5	05-0622GC	Iasis Healthcare 2001 DSH Medicare+Choice Days Group	05/31/2001 09/30/2001 11/30/2001 12/31/2001	8	B-2
6	05-1225G	Southwest Consulting 1999 DSH Medicare+Choice Days Group	09/30/1999	15	B-2
7	05-1459GC	Lifespan Southwest Consulting 2001 DSH Medicare+Choice Days Group	09/30/2001	3	B-3
8	05-1547GC	Caritas Christi Health Care 1999 DSH Medicare+Choice Days Group	09/30/1999	3	B-3
9	05-1604GC	Caritas Christi Health Care 2000 DSH Medicare+Choice Days Group	09/30/2000	4	B-3
10	05-1791G	Caritas Christi Health Care 2001 DSH Medicare+Choice Days Group	09/30/2001	5	B-3
11	05-1942GC	UMass Health System 2001 DSH Medicare+Choice Days Group	09/30/2001	2	B-4
12	05-1970G	Southwest Consulting 2000 DSH Medicare+Choice Days Group	09/30/2000	19	B-4
13	05-2158G	Southwest Consulting 2002 DSH Medicare+Choice Days Group	02/28/2002 09/30/2002	20	B-4
14	05-2182G	Southwest Consulting 2001 DSH Medicare+Choice Days Group	09/30/2001	16	B-5
15	06-0013GC	CHI 1999 DSH Medicare+Choice Days Group	06/30/1999	4	B-6

	Case Number	Group Name	FYEs	No. of Providers	Appendix Reference
16	06-0056GC	UMass Health System 2000 DSH Medicare+Choice Days Group	09/30/2000	2	B-6
17	06-0057GC	UMass Health System 1999 DSH Medicare+Choice Days Group	09/30/1999	2	B-6
18	06-0091GC	UMass Health System 2002 DSH Medicare+Choice Days Group	09/30/2002	3	B-6
19	06-0241GC	CHI 2003 DSH Medicare+Choice Days Group	06/30/2003	19	B-6
20	06-0259GC	Caritas Christi Health Care 2002 DSH Medicare+Choice Days Group	09/30/2002	5	B-7
21	06-0292GC	CHI 2002 DSH Medicare+Choice Days Group	06/30/2002 08/31/2002	16	B-7
22	06-1432GC	Lifespan Southwest Consulting 2000 DSH Medicare+Choice Days Group	09/30/2000	2	B-8
23	06-1730GC	Lifespan Southwest Consulting 2002 DSH Medicare+Choice Days Group	09/30/2002	4	B-8
24	07-1719G	Southwest Consulting 2004 DSH Medicare+Choice Days Group	09/30/2004	18	B-8
25	07-2079G	Southwest Consulting 2003 DSH Medicare+Choice Days Group	09/30/2003	22	B-9
26	08-1851GC	Baystate Health Southwest Consulting 2002 DSH Medicare+Choice Days Group	09/30/2002	2	B-9
27	08-2369GC	Caritas Christi Health Care 2003 DSH Medicare+Choice Days Group	09/30/2003	5	B-10
28	09-0512GC	Iasis Healthcare 2002 DSH Medicare+Choice Days CIRP Group	05/31/2002 09/30/2002 11/30/2002 12/31/2002	6	B-10
29	09-0681GC	Iasis Healthcare 2003 DSH Medicare+Choice Days CIRP Group	05/31/2003 07/31/2003 09/30/2003 11/30/2003 12/31/2003	8	B-10

	Case Number	Group Name	FYEs	No. of Providers	Appendix Reference
30	09-2284GC	Baystate Health Southwest Consulting 2004 DSH Medicare+Choice Days CIRP Group	09/30/2004	2	B-11
31	09-2296GC	Caritas Christi Health Care 2004 DSH Medicare+Choice Days CIRP Group	09/30/2004	4	B-11
32	09-2319GC	UMass Health System 2003 DSH Medicare+Choice Days CIRP Group	09/30/2003	3	B-11
33	09-2321GC	Lifespan Southwest Consulting 2004 DSH Medicare+Choice Days CIRP Group	09/30/2004	3	B-11
34	04-1905GC	HCA 2001 DSH Medicare+Choice Days Group	08/31/2001 09/30/2001 11/30/2001 12/31/2001	30	B-12
35	05-0190GC	HCA 2002 DSH Medicare+Choice Days Group	01/31/2002 02/28/2002 03/31/2002 04/30/2002 05/31/2002 06/30/2002 08/31/2002 09/30/2002 11/30/2002 12/31/2002	58	B-13

APPENDIX B
SUMMARY OF PROVIDERS BY GROUP

Case Number 04-0662GC
Lifespan Southwest Consulting 1999 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
41-0012	Miriam Hospital	09/30/1999
41-0007	Rhode Island Hospital	09/30/1999
22-0116	New England Medical Center	09/30/1999

Case Number 04-2110GC
Iasis Healthcare 2000 DSH Medicare+Choice Days Group
Lead Intermediary: Noridian Administrative Services

Provider No.	Provider Name	FYE
03-0017	Mesa General Hospital	09/30/2000
03-0037	St. Luke's Medical Center	05/31/2000
03-0019	Tempe St. Luke's Hospital	05/31/2000
10-0255	Town & Country Medical Center	12/31/2000

Case Number 05-0314GC
CHI 2000 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
06-0015	St. Anthony Central Hospital	06/30/2000
06-0104	St. Anthony North Hospital	06/30/2000
32-0009	St. Joseph Medical Center (Albuquerque, NM)	06/30/2000
39-0096	St. Joseph Medical Center (Reading, PA)	06/30/2000
06-0012	St. Mary Corwin Medical Center	06/30/2000
04-0007	St. Vincent Infirmary Medical Center	08/31/2000
36-0134	Good Samaritan Hospital	06/30/2000

Case Number 05-0516GC
CHI 2001 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
13-0013	Mercy Medical Center	06/30/2001
06-0015	St. Anthony Central Hospital	06/30/2001
06-0104	St. Anthony North Hospital	06/30/2001

32-0009	St. Joseph Medical Center (Albuquerque, NM)	06/30/2001
39-0096	St. Joseph Medical Center (Reading, PA)	06/30/2001
32-0017	St. Joseph Northeast Heights Hospital	06/30/2001
06-0012	St. Mary Corwin Medical Center	06/30/2001
28-0081	Immanuel Medical Center	06/30/2001
36-0134	Good Samaritan Hospital	06/30/2001
06-0012	St. Mary Corwin Medical Center – Revised NPR	06/30/2001
16-0028	Mercy Hospital – Revised NPR	06/30/2001
28-0081	Immanuel Medical Center – Revised NPR	06/30/2001
32-0017	St. Joseph Northeast Heights Hospital – Revised NPR	06/30/2001

Case Number 05-0622GC
Iasis Healthcare 2001 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
10-0206	Memorial Hospital of Tampa	11/30/2001
03-0017	Mesa General Hospital	09/30/2001
45-0514	Mid-Jefferson Hospital	09/30/2001
45-0518	Park Place Medical Center	09/30/2001
45-0697	Southwest General Hospital	09/30/2001
03-0037	St. Luke's Medical Center	05/31/2001
03-0019	Tempe St. Luke's Hospital	05/31/2001
10-0255	Town & Country Medical Center	12/31/2001

Case Number 05-1225G
Southwest Consulting 1999 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0029	Anna Jaques Hospital	09/30/1999
22-0077	Baystate Medical Center	09/30/1999
22-0086	Beth Israel Deaconess Medical Center	09/30/1999
22-0019	Harrington Memorial Hospital	09/30/1999
22-0024	Holyoke Hospital	09/30/1999
22-0060	Jordan Hospital	09/30/1999
41-0011	Landmark Medical Center	09/30/1999
22-0010	Lawrence General Hospital	09/30/1999
22-0063	Lowell General Hospital	09/30/1999
41-0001	Memorial Hospital of Rhode Island	09/30/1999
22-0073	Morton Hospital & Medical Center	09/30/1999
41-0004	Roger Williams Hospital	09/30/1999
22-0074	Southcoast Hospitals Group	09/30/1999

41-0005	St. Joseph Health Services of Rhode Island	09/30/1999
22-0008	Sturdy Memorial Hospital	09/30/1999

Case Number 05-1459GC
Lifespan Southwest Consulting 2001 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
41-0012	Miriam Hospital	09/30/2001
22-0116	New England Medical Center	09/30/2001
41-0007	Rhode Island Hospital	09/30/2001

Case Number 05-1547GC
Caritas Christi Health Care 1999 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0017	Carney Hospital	09/30/1999
22-0020	St. Anne's Hospital	09/30/1999
22-0036	St. Elizabeth's Medical Center	09/30/1999

Case Number 05-1604GC
Caritas Christi Health Care 2000 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0111	Caritas Good Samaritan Medical Center	09/30/2000
22-0080	Holy Family Hospital	09/30/2000
22-0020	St. Anne's Hospital	09/30/2000
22-0036	St. Elizabeth's Medical Center	09/30/2000

Case Number 05-1791G
Caritas Christi Health Care 2001 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0111	Caritas Good Samaritan Medical Center	09/30/2001
22-0017	Carney Hospital	09/30/2001
22-0080	Holy Family Hospital	09/30/2001
22-0020	St. Anne's Hospital	09/30/2001
22-0036	St. Elizabeth's Medical Center	09/30/2001

Case Number 05-1942GC
UMass Health System 2001 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0001	Health Alliance Hospital	09/30/2001
22-0163	UMass Memorial Medical Center	09/30/2001

Case Number 05-1970G
Southwest Consulting 2000 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0029	Anna Jaques Hospital	09/30/2000
22-0077	Baystate Medical Center	09/30/2000
22-0086	Beth Israel Deaconess Medical Center	09/30/2000
22-0052	Brockton Hospital	09/30/2000
22-0070	Hallmark Health System	09/30/2000
22-0019	Harrington Memorial Hospital	09/30/2000
22-0024	Holyoke Hospital	09/30/2000
22-0060	Jordan Hospital	09/30/2000
41-0011	Landmark Medical Center	09/30/2000
22-0010	Lawrence General Hospital	09/30/2000
22-0063	Lowell General Hospital	09/30/2000
41-0001	Memorial Hospital of Rhode Island	09/30/2000
22-0073	Morton Hospital & Medical Center	09/30/2000
22-0067	Quincy Hospital	09/30/2000
41-0004	Roger Williams Hospital	09/30/2000
22-0082	Saints Memorial Medical Center	09/30/2000
22-0074	Southcoast Hospitals Group	09/30/2000
41-0005	St. Joseph Health Services of Rhode Island	09/30/2000
22-0008	Sturdy Memorial Hospital	09/30/2000

Case Number 05-2158G
Southwest Consulting 2002 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0029	Anna Jaques Hospital	09/30/2002
22-0086	Beth Israel Deaconess Medical Center	09/30/2002
22-0052	Brockton Hospital	09/30/2002
22-0015	Cooley Dickinson Hospital	09/30/2002

22-0070	Hallmark Health System	09/30/2002
22-0019	Harrington Memorial Hospital	09/30/2002
22-0024	Holyoke Hospital	09/30/2002
22-0060	Jordan Hospital	09/30/2002
41-0011	Landmark Medical Center	09/30/2002
22-0010	Lawrence General Hospital	09/30/2002
22-0063	Lowell General Hospital	09/30/2002
41-0001	Memorial Hospital of Rhode Island	09/30/2002
22-0174	Merrimack Valley Hospital	09/30/2002
22-0073	Morton Hospital & Medical Center	09/30/2002
10-0232	Putnam Community Medical Center	02/28/2002
22-0067	Quincy Hospital	09/30/2002
41-0004	Roger Williams Hospital	09/30/2002
22-0074	Southcoast Hospitals Group	09/30/2002
22-0008	Sturdy Memorial Hospital	09/30/2002
22-0031	Boston Medical Center	09/30/2002

Case Number 05-2182G
Southwest Consulting 2001 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0029	Anna Jaques Hospital	09/30/2001
22-0077	Baystate Medical Center	09/30/2001
22-0086	Beth Israel Deaconess Medical Center	09/30/2001
22-0052	Brockton Hospital	09/30/2001
22-0070	Hallmark Health System	09/30/2001
22-0024	Holyoke Hospital	09/30/2001
22-0060	Jordan Hospital	09/30/2001
41-0011	Landmark Medical Center	09/30/2001
22-0010	Lawrence General Hospital	09/30/2001
22-0063	Lowell General Hospital	09/30/2001
41-0001	Memorial Hospital of Rhode Island	09/30/2001
22-0073	Morton Hospital & Medical Center	09/30/2001
22-0067	Quincy Hospital	09/30/2001
41-0004	Roger Williams Hospital	09/30/2001
22-0074	Southcoast Hospitals Group	09/30/2001
22-0015	Cooley Dickinson Hospital – Revised NPR	09/30/2001

Case Number 06-0013GC
CHI 1999 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
06-0015	St. Anthony Central Hospital	06/30/1999
39-0096	St. Joseph Medical Center	06/30/1999
06-0012	St. Mary Corwin Medical Center	06/30/1999
06-0012	St. Mary Corwin Medical Center – Revised NPR	06/30/1999

Case Number 06-0056GC
UMass Health System 2000 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0001	Health Alliance Hospital	09/30/2000
22-0163	UMass Memorial Medical Center	09/30/2000

Case Number 06-0057GC
UMass Health System 1999 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0001	Health Alliance Hospital	09/30/1999
22-0057	UMass Memorial Hospital	09/30/1999

Case Number 06-0091GC
UMass Health System 2002 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0001	Health Alliance Hospital	09/30/2002
22-0049	Marlborough Hospital	09/30/2002
22-0163	UMass Memorial Medical Center	09/30/2002

Case Number 06-0241GC
CHI 2003 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
28-0060	Bergan Mercy Medical Center	06/30/2003
18-0037	Caritas Medical Center	06/30/2003

36-0134	Good Samaritan Hospital	06/30/2003
28-0081	Immanuel Medical Center	06/30/2003
16-0028	Mercy Hospital	06/30/2003
13-0013	Mercy Medical Center	06/30/2003
06-0031	Penrose St. Francis Health System	06/30/2003
06-0015	St. Anthony Central Hospital	06/30/2003
06-0104	St. Anthony North Hospital	06/30/2003
39-0096	St. Joseph Medical Center (Reading, PA)	06/30/2003
06-0012	St. Mary Corwin Medical Center	06/30/2003
06-0012	St. Mary Corwin Medical Center – Revised NPR	06/30/2003
06-0015	St. Anthony Central Hospital – Revised NPR	06/30/2003
06-0104	St. Anthony North Hospital – Revised NPR	06/30/2003
28-0060	Bergan Mercy Medical Center – Revised NPR	06/30/2003
39-0096	St. Joseph Medical Center – Revised NPR	06/30/2003
50-0021	St. Clare Hospital	06/30/2003
50-0108	St. Joseph Medical Center (Tacoma, WA)	06/30/2003
50-0141	St. Francis Community Hospital	06/30/2003

Case Number 06-0259GC
Caritas Christi Health Care 2002 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0111	Caritas Good Samaritan Medical Center	09/30/2002
22-0017	Carney Hospital	09/30/2002
22-0080	Holy Family Hospital	09/30/2002
22-0020	St. Anne's Hospital	09/30/2002
22-0036	St. Elizabeth's Medical Center	09/30/2002

Case Number 06-0292GC
CHI 2002 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
18-0037	Caritas Medical Center	06/30/2002
36-0134	Good Samaritan Hospital	06/30/2002
28-0081	Immanuel Medical Center	06/30/2002
16-0028	Mercy Hospital	06/30/2002
13-0013	Mercy Medical Center	06/30/2002
06-0031	Penrose St. Francis Health System	06/30/2002
06-0015	St. Anthony Central Hospital	06/30/2002
06-0104	St. Anthony North Hospital	06/30/2002
32-0009	St. Joseph Medical Center (Albuquerque, NM)	08/31/2002

32-0017	St. Joseph Northeast Heights Hospital	08/31/2002
06-0012	St. Mary Corwin Medical Center	06/30/2002
06-0012	St. Mary Corwin Medical Center – Revised NPR	06/30/2002
28-0081	Immanuel Medical Center – Revised NPR	06/30/2002
32-0017	St. Joseph Northeast Heights Hospital – Revised NPR	08/31/2002
50-0108	St. Joseph Medical Center (Tacoma, WA)	06/30/2002
50-0141	St. Francis Community Hospital	06/30/2002

Case Number 06-1432GC
Lifespan Southwest Consulting 2000 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0116	New England Medical Center	09/30/2000
41-0007	Rhode Island Hospital	09/30/2000

Case Number 06-1730GC
Lifespan Southwest Consulting 2002 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
41-0012	Miriam Hospital	09/30/2002
22-0116	New England Medical Center	09/30/2002
41-0006	Newport Hospital	09/30/2002
41-0007	Rhode Island Hospital	09/30/2002

Case Number 07-1719G
Southwest Consulting 2004 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0010	Lawrence General Hospital	09/30/2004
22-0015	Cooley Dickinson Hospital	09/30/2004
22-0019	Harrington Memorial Hospital	09/30/2004
22-0024	Holyoke Hospital	09/30/2004
22-0029	Anna Jaques Hospital	09/30/2004
22-0033	Beverly Hospital	09/30/2004
22-0052	Brockton Hospital	09/30/2004
22-0060	Jordan Hospital	09/30/2004
22-0063	Lowell General Hospital	09/30/2004
22-0065	Noble Hospital	09/30/2004
22-0067	Quincy Medical Center	09/30/2004

22-0070	Hallmark Health System	09/30/2004
22-0074	Southcoast Hospitals Group	09/30/2004
22-0086	Beth Israel Deaconess Medical Center	09/30/2004
22-0095	Heywood Hospital	09/30/2004
22-0116	New England Medical Center	09/30/2004
41-0004	Roger Williams Medical Center	09/30/2004
41-0011	Landmark Medical Center	09/30/2004

Case Number 07-2079G
Southwest Consulting 2003 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0008	Sturdy Memorial Hospital	09/30/2003
22-0010	Lawrence General Hospital	09/30/2003
22-0015	Cooley Dickinson Hospital	09/30/2003
22-0019	Harrington Memorial Hospital	09/30/2003
22-0024	Holyoke Hospital	09/30/2003
22-0029	Anna Jaques Hospital	09/30/2003
22-0031	Boston Medical Center	09/30/2003
22-0033	Beverly Hospital	09/30/2003
22-0052	Brockton Hospital	09/30/2003
22-0060	Jordan Hospital	09/30/2003
22-0063	Lowell General Hospital	09/30/2003
22-0067	Quincy Hospital	09/30/2003
22-0070	Hallmark Health System	09/30/2003
22-0073	Morton Hospital & Medical Center	09/30/2003
22-0074	Southcoast Hospitals Group	09/30/2003
22-0077	Baystate Medical Center	09/30/2003
22-0086	Beth Israel Deaconess Medical Center	09/30/2003
22-0095	Heywood Hospital	09/30/2003
22-0116	New England Medical Center	09/30/2003
41-0001	Memorial Hospital of Rhode Island	09/30/2003
41-0004	Roger Williams Medical Center	09/30/2003
41-0011	Landmark Medical Center	09/30/2003

Case Number 08-1851GC
Baystate Health Southwest Consulting 2002 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
22-0050	Baystate Mary Lane Hospital	09/30/2002
22-0077	Baystate Medical Center	09/30/2002

Case Number 08-2369GC
Caritas Christi Health Care 2003 DSH Medicare+Choice Days Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0017	Caritas Carney Hospital	09/30/2003
22-0020	St. Anne's Hospital	09/30/2003
22-0036	St. Elizabeth's Medical Center	09/30/2003
22-0080	Holy Family Hospital	09/30/2003
22-0111	Caritas Good Samaritan Medical Center	09/30/2003

Case Number 09-0512GC
Iasis Healthcare 2002 DSH Medicare+Choice Days CIRP Group
Lead Intermediary: Noridian Administrative Services

Provider No.	Provider Name	FYE
03-0017	Mesa General Hospital	09/30/2002
03-0019	Tempe St. Luke’s Hospital	05/31/2002
03-0037	St. Luke’s Medical Center – Revised NPR	05/31/2002
10-0206	Memorial Hospital of Tampa	11/30/2002
10-0255	Town & Country Medical Center	12/31/2002
45-0697	Southwest General Hospital	09/30/2002

Case Number 09-0681GC
Iasis Healthcare 2003 DSH Medicare+Choice Days CIRP Group
Lead Intermediary: Noridian Administrative Services

Provider No.	Provider Name	FYE
03-0017	Mesa General Hospital	09/30/2003
03-0019	Tempe St. Luke’s Hospital	05/31/2003
03-0037	St. Luke’s Medical Center	05/31/2003
10-0255	Town & Country Medical Center	12/31/2003
45-0514	Mid-Jefferson Hospital	07/31/2003
45-0518	Park Place Medical Center	07/31/2003
45-0518	Park Place Medical Center	11/30/2003
45-0697	Southwest General Hospital	09/30/2003

Case Number 09-2284GC
Baystate Health Southwest Consulting 2004 DSH Medicare+Choice Days CIRP Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
22-0016	Baystate Franklin Medical Center	09/30/2004
22-0077	Baystate Medical Center	09/30/2004

Case Number 09-2296GC
Caritas Christi Health Care 2004 DSH Medicare+Choice Days CIRP Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0020	St. Anne's Hospital	09/30/2004
22-0036	St. Elizabeth's Medical Center	09/30/2004
22-0080	Holy Family Hospital	09/30/2004
22-0111	Caritas Good Samaritan Medical Center	09/30/2004

Case Number 09-2319GC
UMass Health System 2003 DSH Medicare+Choice Days CIRP Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
22-0001	Health Alliance Hospital	09/30/2003
22-0049	Marlborough Hospital	09/30/2003
22-0163	UMass Memorial Medical Center	09/30/2003

Case Number 09-2321GC
Lifespan Southwest Consulting 2004 DSH Medicare+Choice Days CIRP Group
Lead Intermediary: NHIC Corp, c/o National Government Services

Provider No.	Provider Name	FYE
41-0006	Newport Hospital	09/30/2004
41-0007	Rhode Island Hospital	09/30/2004
41-0012	Miriam Hospital	09/30/2004

Case Number 04-1905GC
HCA 2001 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
05-0125	Regional Medical Center of San Jose	12/31/2001
06-0014	Presbyterian St. Luke's Medical Center	08/31/2001
06-0032	Rose Medical Center	12/31/2001
06-0065	North Suburban Medical Center	12/31/2001
06-0100	Medical Center of Aurora	12/31/2001
10-0009	Cedars Medical Center	12/31/2001
10-0110	Osceola Regional Medical Center	12/31/2001
10-0131	Aventura Hospital and Medical Center	12/31/2001
10-0167	Plantation General Hospital	08/31/2001
10-0179	Memorial Hospital of Jacksonville	12/31/2001
10-0189	Northwest Medical Center	12/31/2001
10-0209	Kendall Regional Medical Center	12/31/2001
10-0212	Ocala Regional Medical Center	08/31/2001
10-0238	Northside Hospital	09/30/2001
10-0239	Edward White Hospital	12/31/2001
10-0243	Brandon Regional Hospital	12/31/2001
10-0246	Lawnwood Regional Medical Center	09/30/2001
10-0279	Gulf Coast Hospital	12/31/2001
13-0014	West Valley Medical Center	09/30/2001
19-0177	Lakeview Regional Medical Center	12/31/2001
19-0200	Lakeland Medical Center	12/31/2001
44-0006	Skyline Medical Center	11/30/2001
44-0150	Summit Medical Center	12/31/2001
44-0161	Centennial Medical Center	12/31/2001
45-0097	Bayshore Medical Center	12/31/2001
45-0222	Conroe Regional Medical Center	12/31/2001
45-0431	St. David's Hospital	12/31/2001
45-0634	Denton Regional Medical Center	12/31/2001
45-0644	West Houston Medical Center	12/31/2001
45-0788	Corpus Christi Medical Center	08/31/2001

Case Number 05-0190GC
HCA 2002 DSH Medicare+Choice Days Group
Lead Intermediary: Wisconsin Physicians Service

Provider No.	Provider Name	FYE
05-0022	Riverside Community Hospital	04/30/2002
05-0125	Regional Medical Center of San Jose	12/31/2002
05-0215	San Jose Medical Center	01/31/2002
06-0014	Presbyterian St. Luke's Medical Center	08/31/2002
06-0032	Rose Medical Center	12/31/2002
06-0065	North Suburban Medical Center	12/31/2002
06-0100	Medical Center of Aurora	12/31/2002
10-0009	Cedars Medical Center	12/31/2002
10-0110	Medical Center of Osceola	12/31/2002
10-0131	Aventura Hospital and Medical Center	12/31/2002
10-0161	Central Florida Regional Hospital	05/31/2002
10-0167	Plantation General Hospital	08/31/2002
10-0180	St. Petersburg General Hospital	04/30/2002
10-0189	Northwest Medical Center	12/31/2002
10-0191	New Port Richey Hospital	06/30/2002
10-0204	North Florida Regional Medical Center	02/28/2002
10-0209	Kendall Regional Medical Center	12/31/2002
10-0226	Orange Park Medical Center	06/30/2002
10-0234	Columbia Hospital	06/30/2002
10-0238	Northside Hospital	09/30/2002
10-0243	Brandon Regional Hospital	12/31/2002
10-0246	Lawnwood Regional Medical Center	09/30/2002
10-0269	Palms West Hospital	05/31/2002
10-0279	Gulf Coast Hospital	12/31/2002
11-0020	Emory Peachtree Regional Hospital	12/31/2002
11-0172	Emory Dunwoody Medical Center	12/31/2002
13-0014	West Valley Medical Center	09/30/2002
19-0177	Lakeview Regional Medical Center	12/31/2002
19-0200	Lakeland Medical Center	12/31/2002
25-0123	Garden Park Community Hospital	12/31/2002
26-0027	Research Medical Center	12/31/2002
26-0107	Baptist Lutheran Medical Center	12/31/2002
26-0166	Medical Center of Independence	12/31/2002
29-0003	Sunrise Hospital and Medical Center	01/31/2002
37-0093	Oklahoma University Medical Center	08/31/2002
44-0006	Skyline Medical Center	11/30/2002
44-0046	Horizon Medical Center	05/31/2002
44-0150	Summit Medical Center	12/31/2002
44-0161	Centennial Medical Center	12/31/2002
45-0087	North Hills Medical Center	05/31/2002

45-0097	Bayshore Medical Center	12/31/2002
45-0126	East Houston Medical Center	02/28/2002
45-0222	Conroe Regional Medical Center	12/31/2002
45-0388	Southwest Texas Methodist Hospital	06/30/2002
45-0403	North Central Medical Center	08/31/2002
45-0617	Clear Lake Regional Medical Center	12/31/2002
45-0630	Spring Branch Medical Center	06/30/2002
45-0631	Methodist Specialty and Transplant Hospital	06/30/2002
45-0644	West Houston Medical Center	12/31/2002
45-0647	Medical City Dallas Hospital	05/31/2002
45-0662	Valley Regional Medical Center	03/31/2002
45-0672	Plaza Medical Center of Fort Worth	01/31/2002
45-0675	Arlington Medical Center	05/31/2002
45-0711	Rio Grande Regional Hospital	09/30/2002
45-0733	Northeast Methodist Hospital	03/31/2002
45-0775	Kingwood Medical Center	09/30/2002
45-0788	Corpus Christi Medical Center	08/31/2002
45-0809	North Austin Medical Center	06/30/2002