

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-20 One-Time Notification</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 2357</b>	<b>Date: September 6, 2019</b>
	<b>Change Request 10484</b>

**SUBJECT: 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**

**I. SUMMARY OF CHANGES:** The purpose of this Change Request (CR) is to direct the contractors 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).

**EFFECTIVE DATE: December 9, 2019**

*\*Unless otherwise specified, the effective date is the date of service.*

**IMPLEMENTATION DATE: December 9, 2019**

*Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

**II. CHANGES IN MANUAL INSTRUCTIONS:** (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-Only One Per Row.

<b>R/N/D</b>	<b>CHAPTER / SECTION / SUBSECTION / TITLE</b>
N/A	N/A

**III. FUNDING:**

**For Medicare Administrative Contractors (MACs):**

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

**IV. ATTACHMENTS:**

**One Time Notification**

# Attachment - One-Time Notification

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## I. GENERAL INFORMATION

**A. Background:** On April 28, 2010, the Administrator of the Centers for Medicare & Medicaid Services (CMS) issued CMS Ruling 1498-R. The Ruling addressed administrative appeals on three different issues related to Medicare Disproportionate Share Hospital (DSH) payment:

- (1) the Medicare-Supplemental 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; and
- (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.

This 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.

**B. Policy:** 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).

Prior to the implementation of the 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 in order 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 our 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).

The CMS issued Ruling 1498-R2 on April 22, 2015, and it can be found at:

<http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings/CMS-Rulings-Items/CMS1498-R2.html>.

The 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 insofar 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 fiscal year 2004 and earlier, or SSI ratios for hospital cost-reporting periods, but only for those patient discharges occurring before October 1, 2004.

The CMS issued Change Request (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 on the basis of "covered days" or "total days" for hospital cost reporting periods that involve SSI ratios for federal fiscal year 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 (assuming any such hospital cost reporting period involves SSI ratios for federal fiscal year 2004 and earlier or SSI ratios for hospital cost-reporting periods, but only for those patient discharges occurring before October 1, 2004). 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 fiscal year). Therefore, in lieu of an election, a number of hospitals requested that the Notice of Amount Program Reimbursement (NPR)/revised NPR based on its federal fiscal year 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 fiscal years encompassing the hospitals' cost reporting period(s), or
- (2) request that the revised Medicare-SSI fraction be calculated for the discharges 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 the MAC's website update so that issuance of an NPR/revised NPR with a revised Medicare-SSI fraction calculated based on the federal fiscal year is placed on hold. The hospital shall notify the Medicare contractor within 180 calendar days of its request to place the cost report on hold as to whether it wants to (a) submit a request for a realigned Medicare-SSI fraction or (b) settle the cost report with a revised Medicare-SSI fraction based on the federal fiscal year. 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 fiscal year ratios for that hospital using the fiscal year ratios from the CMS website for the relevant fiscal year(s). The

provider may subsequently request realignment using normal timelines and procedures.

In addition, if a hospital previously received an initial NPR/revised NPR with a revised Medicare-SSI fraction calculated based on the federal fiscal year, the hospital may request realignment, based on the revised Medicare-SSI fraction, within the normal timeframes.

## II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility									
		A/B MAC			D M E M A C	Shared-System Maintainers				Other	
		A	B	H H H		F I S S	M C S	V M S	C W F		
10484.1	Using the policy in this CR, contractors shall inform hospitals, through notification on their website, of the additional instructions applicable for hospital cost reporting periods that involve SSI ratios for federal fiscal year 2004 and earlier, or SSI ratios for hospital realignment requests to use its cost reporting period(s), but only for those patient discharges occurring before October 1, 2004.	X									

## III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility						
		A/B MAC			D M E M A C	C E D I		
		A	B	H H H				
10484.2	CR as Provider Education: Contractors shall post this entire instruction, or a direct link to this instruction, on their Web sites and include information about it in a listserv message within 5 business days after receipt of the notification from CMS announcing the availability of the article. In addition, the entire instruction must be included in the contractor's next regularly scheduled bulletin. Contractors are free to supplement it with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X						

## IV. SUPPORTING INFORMATION

**Section A: Recommendations and supporting information associated with listed requirements: N/A**

"Should" denotes a recommendation.

<b>X-Ref Requirement Number</b>	<b>Recommendations or other supporting information:</b>
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**Section B: All other recommendations and supporting information: N/A**

## **V. CONTACTS**

**Pre-Implementation Contact(s):** Barbara Shadle, 410-786-6475 or Barbara.Shadle@cms.hhs.gov , Benjamin Moll, 410-786-4390 or Benjamin.Moll@cms.hhs.gov

**Post-Implementation Contact(s):** Contact your Contracting Officer's Representative (COR).

## **VI. FUNDING**

### **Section A: For Medicare Administrative Contractors (MACs):**

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**ATTACHMENTS: 0**