



## **YET ANOTHER FEDERAL COURT REJECTS HOSPITALS' CLAIMS FOR INCLUSION OF STATE-ONLY MEDICAL ASSISTANCE DAYS IN DSH ADJUSTMENT**

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The United States District Court for the District of Columbia recently affirmed the Secretary's exclusion of certain days from the Medicaid Fraction of the Medicare disproportionate share hospital (DSH) adjustment. [Banner Health v. Sebelius, No. 07-1614 \(D.D.C. June 7, 2010\)](#) [\[PDF\]](#). Specifically, four Arizona hospitals sought to have medically needy and indigent days that were funded entirely by the state through its state Medicaid DSH program, included in the numerator of the Medicaid Fraction of the Medicare DSH calculation for cost years 1991 and 1993-1999.

The Provider Reimbursement Review Board (PRRB) had decided in favor of the hospitals, finding that the days at issue represented a section 1115 expansion population and, therefore, should have been included in the DSH calculation. The CMS Administrator reversed, ruling that the days were general assistance days for which there was no federal financial participation and thus had to be excluded from the Medicaid Fraction.

The Court upheld the Administrator's decision. It found that the days at issue were for patients who were ineligible for Medicaid under Arizona's state plan and that the state received no federal matching funds for the services associated with the days. Accordingly, the days could not be included in the numerator of the Medicaid Fraction.

The Court further found that three of the four hospitals did not qualify for relief under the hold harmless provisions of CMS Program Memorandum A-99-62, as these hospitals did not request or receive inclusion of the type of days at issue in their Medicaid Proxy prior to October 15, 1999. With regard to the fourth hospital, the Court remanded the case to the Secretary to clarify the practice with regard to the days at issue for the appealed years.

### **Ober Kaler's Comments**

This case is one more in a continuing line of court decisions supporting the government's position that medical assistance days covered under a state program, that is not a traditional Medicaid program and does not draw down federal matching funds, should not be included in the Medicaid Fraction of the Medicare DSH adjustment. See "[Another District Court Rejects Hospitals' DSH Claims](#)," *Payment Matters*, October 29, 2009.

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