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Government Reaches \$666 Million Settlement in Medicare Reimbursement Case

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On March 11, 2008, the federal government and hundreds of hospitals throughout the United States entered into a settlement agreement under which the hospitals will receive \$666,125,000 in additional Medicare reimbursement. The settlement took years to achieve, involved hospitals nationwide, and stemmed from a Medicare reimbursement policy applied from the mid-1980s until the late 1990s.

In the mid-1980s, the Medicare program adopted a policy applicable to Medicare disproportionate share hospital (DSH) payments. That policy excluded from the payment calculation days attributable to patients who were eligible for Medicaid but for which no Medicaid payment was made (eligible but not paid days). After several hospitals successfully challenged this policy, the government amended its rule in HCFA Ruling 97-2. In amending the rule, however, the government refused to apply the changes to past periods, which led to a new round of litigation.

The United States Court of Appeals for the District of Columbia Circuit in *Monmouth Medical Center v. Thompson*, rejected the CMS's "no reopening" position and required the Secretary to reopen past cost reports to apply the changed policy. *Monmouth* involved a situation in which a reopening request had been timely made. Following *Monmouth*, however, hospitals around the country filed suit arguing that they were entitled to a reopening of their cost reports for periods prior to 1997 even if they had not earlier requested reopening. Again, the United States Court of Appeals agreed. Baystate Health System was successful at both the District Court and Court of Appeals levels in asserting that the government was required to reopen cost reports even though no reopening request had been previously made. The government then sought review by the U.S. Supreme Court in early 2006, which the Court denied.

Following the Supreme Court's action, the government began negotiations to settle *Baystate* and all related cases. Those negotiations led to the agreement that was completed on March 11.

S. Craig Holden

During the proceedings, Ober|Kaler represented 41 hospitals, recovering over \$68 million as part of the settlement. According to the current timetable, the hospitals should receive their additional reimbursement in early to mid-April.

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