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## CMS Proposes Changes to DSH Patient Day Count and IME Bed Count Calculations

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**CMS Proposes Changes to DSH Patient Day Count and IME Bed Count Calculations**

**CMS's Proposed Rule on Hospitals' "New" GME Programs Would Restrict Reimbursement for Such Programs**

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Hospitals may gain some simplified rules regarding the counting of Medicaid days beginning in federal fiscal year 2010. As we noted in the May 14, 2009 edition of *Payment Matters*, CMS's FY 2010 Inpatient Prospective Payment System (IPPS) Proposed Rule offers some changes to the way that patient days are counted in the Disproportionate Share Hospital (DSH) adjustment. See "**CMS Publishes Inpatient Prospective Payment System (IPPS) FY 2010 Proposed Rule**," *Payment Matters*, May 14, 2009.

Specifically, the proposed rule includes bright line tests for the counting of observation beds for DSH and indirect medical education (IME) purposes, and for the counting of labor and delivery room days for DSH purposes. The proposed rule would also give hospitals several options with respect to reporting the number of patient days attributable to Medicaid eligible patients for DSH purposes. If adopted, these new tests would apply to cost reporting periods beginning on or after October 1, 2009.

### Observation Days and Beds - DSH and IME

Under the existing rules, observation days are excluded from the count of available days for DSH purposes and from the count of available beds for IME purposes, unless such days are associated with a patient who is subsequently admitted to the hospital for inpatient care. The proposed rule would not count any days in the DSH calculation attributable to patients receiving observation services, regardless of whether the patient is subsequently admitted for inpatient services. CMS has also proposed to exclude observation beds from the IME calculation, in order to consistently treat observation beds for different Medicare purposes.

### Labor/Delivery Days - DSH

Currently, days attributable to a patient receiving services in a labor and delivery area are included in the Medicaid DSH fraction only if the patient is admitted to an inpatient bed prior to receiving the labor and delivery services. The current rule also includes in the Medicaid fraction any days attributable to a patient who receives labor and delivery services in a multi-purpose labor, delivery and postpartum room, but only in proportion to the routine inpatient

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(versus ancillary) services provided to the patient. Under the proposed changes, if a patient is admitted as an inpatient for labor and delivery services, all days associated with that patient would be included in the Medicaid fraction of the DSH calculation.

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### **Method of Reporting Days - DSH**

The proposed rule also addresses the manner in which Medicaid days are reported by hospitals. Pursuant to the DSH regulation, the numerator of the DSH Medicaid fraction includes days "attributable to patients who were eligible for Medicaid but not entitled to Medicare Part A." Under existing policy, Medicaid inpatient days are to be reported in the cost reporting period in which the patient is discharged. Providers, however, have been limited in their ability to report the data consistent with this policy, due to restrictions in State Medicaid agencies' data collection.

The proposed rule would give providers a choice between three different options when reporting days attributable to Medicaid eligible patients: (1) date of admission, (2) date of discharge, or (3) dates of service. If the rule is adopted, providers would need to notify CMS (through their fiscal intermediary or MAC) before adopting any change to their reporting methodology. The rule would require notice at least thirty days prior to the beginning of the cost reporting period to which the new methodology would apply and any change in counting would apply for the entire fiscal year and subsequent fiscal years, unless the provider submits another request to change its reporting methodology.

**Ober|Kaler's Comments:** Comments to the proposed rules are due by 5 pm on June 30, 2009. If the newly proposed rules are problematic, providers should submit timely comments.

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