PRRB Update:

Proposed Changes to the PRRB Regulations

&

Alert 10

A Reprieve? . . . Not Really
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Cost Report Appeals – Statutory Basis

Medicare statute allows providers to appeal cost report determinations to PRRB if:

» Provider is “dissatisfied” with the MAC’s final determination of Medicare reimbursement;

» The amount in controversy is > $10,000; and

» Hearing request is filed within 180 days of NPR

OR

» Provider does not receive NPR on a timely basis (12 months of cost report filing);

» Amount in controversy is > $10,000; and

» Hearing request is filed within 180 days of when NPR should have been received

In 2008, CMS adopted the following rule:

Provider has right to PRRB hearing only if it has preserved its right to claim dissatisfaction by:

• Including a claim for specific item(s) on its cost report for the period where the provider seeks payment that it believes to be in accordance with Medicare policy; or

• If Medicare rules do not allow for payment, by self-disallowing the requested item on the cost report

• 42 C.F.R. § 405.1835(a)

■ CMS’s Goal with 2008 PRRB rule:
  » To overturn decision in *Bethesda Hospital Ass’n v. Bowen* which stated self-disallowance was not required
  » To deny hospitals ability to “appeal” items that were not filed on the cost report but which could have been
    • i.e., no “dissatisfaction” if not claimed
    • 2008 rule tried to resolve circuit split on this issue

■ Practical consequence of 2008 rule:
  » MACs will challenge jurisdiction over items that are appealed and for which “no adjustment” was made
Cost Report Appeals CMS’s Proposed Policy

- Eliminates 2008 “dissatisfaction” policy

- Proposes new 42 C.F.R. § 413.24(j) as part of cost report requirements (not a jurisdictional issue)
  
  » (j)(1): in order to receive reimbursement for a specific item, the provider must claim specific item on cost report or self-disallow the item

  » (j)(2): if a provider self-disallows, provider must include a reimbursement amount in the protested line of the cost report and include separate work sheet explaining why item was self-disallowed and how reimbursement was calculated
Cost Report Appeals CMS’s Proposed Policy

■ New 42 C.F.R. § 413.24(j) cont’d

  » (j)(3): Whether the provider’s cost report includes an appropriate claim for a specific item is determined by reference to the cost report that the provider submits and is accepted by MAC, including amended and adjusted cost reports

  » (j)(4): if MAC concludes there is an appropriate claim, MAC must either pay or deny and make adjustment; if MAC concludes there is not an appropriate claim, MAC cannot pay even if substantive reimbursement requirements are met
Cost Report Appeals CMS’s Proposed Policy

■ New 42 C.F.R. § 413.24(j) cont’d

  » (j)(5): if provider files appeal and there is a question as to whether item was appropriately claimed, PRRB must apply procedures in (j)(3) to determine if item was claimed:

  • New 42 C.F.R. § 405.1873

    » PRRB must make findings of fact and conclusions of law as to whether the item was appropriately claimed

    » If PRRB decides the provider did not claim item, the PRRB may not decline to exercise jurisdiction

    » PRRB findings and conclusions must be included with hearing decision on merits or grants of EJR
Cost Report Appeals CMS’s Proposed Policy

Impact of proposed policy:

» CMS attempts to avoid Bethesda-type litigation where it might lose question as to whether PRRB has “jurisdiction” to hear appeal for unclaimed items

• Statute grants CMS great discretion to require “documentation” to prove claims for reimbursement

» Places ultimate discretion on MACs to accept “amendments” to filed cost reports on issues like DSH Medicaid eligible days or bad debts that were unknowingly returned
Cost Report Appeals Implications of Policy If Adopted

- Rule fails to recognize that many essential pieces of information necessary to claim accurate reimbursement are unavailable at time cost report is due
  » DSH, DGME, IME, and bad debt are best examples
  » MAC has discretion to reject late information

- Rule eliminates MAC discretion to remove or correct obvious errors or mistakes in cost report
  » “final contractor determination must not include any reimbursement for the specific item, regardless of whether the other substantive requirements for the specific item are or are not satisfied.”
PRRB Alert 10

- Involves cost report appeals for “Medicaid eligible days”
- Followed Board decision in Danbury appeal
  - Holding: Jurisdiction exists if provider can verify data on eligible days was not available when cost report was filed
- Board orders providers to supplement record by July 22, 2014 with three items of information
PRRB Alert 10

Information required by Alert 10

» A detailed description of the process that the provider used to identify and accumulate the actual Medicaid paid and unpaid eligible days that were reported and filed on the Medicare cost report at issue.

» The number of additional Medicaid paid and unpaid eligible days that the provider is requesting to be included in the DSH calculation.

» A detailed explanation why the additional Medicaid paid and unpaid eligible days at issue could not be verified by the state at the time the cost report was filed. If there is more than one explanation/reason, identify how many of these days are associated with each explanation/reason.
Alert 10

Tips regarding Alert 10:

- July 22, 2014 may not be a drop-dead cut-off
  - Opportunities to supplement record latter
  - Board may be reluctant to process thousands of filings
  - But MACs may not feel authorized to review material either
- Make a case in the record for impossibility
- Preserve legal challenge to Alert 10
Some Practical Tips

■ Run reports as contemporaneous with the filing of the cost report as practical

■ Document all efforts to assemble and verify Medicaid eligible days with the State

■ Don’t assume you can appeal additional Medicaid days after filing your cost report

■ Don’t assume you can raise new issues or items for the first time before the PRRB even if they are discovered later
Practical Tips (Cont.)

- Communicate with the MAC regarding expectations because they are being given greater discretion and authority by the PRRB

- Look to either include in the cost report or protest items and be prepared to include estimate, calculation and description

- Make sure your procedures are being followed internally to avoid criticism from the PRRB
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