

RAC MONITOR

“Recent Medicare Appeals Council Cases Provide Additional Support for Part B Reimbursement when Inpatient Hospital Admission is Denied”

Andrew B. Wachler
Jennifer Colagiovanni
WACHLER & ASSOCIATES, P.C.

The Medicare Appeals Council (“the Council”) recently issued two decisions which provide support for the position that providers are entitled to appropriate Part B payment when Part A inpatient services are denied. These decisions build on the Council’s longstanding position, outlined in *O’Connor Hospital*, that providers are entitled to Part B reimbursement when Part A inpatient services are denied.

The recent Appeals Council cases were preceded by a series of earlier decisions which outlined the Council’s foundational arguments for appropriate Part B payment when an inpatient admission is denied. One of the most critical cases outlining the Council’s position on this issue is *O’Connor Hospital v. National Government Services*. In *O’Connor Hospital*, issued February 1, 2010, the Council reinforced its earlier holding in *UMDNJ – University Hospital v. Riverbend GBA* (March 14, 2005), concluding that hospitals are entitled to Part B reimbursement where Part A reimbursement is denied in inpatient short stay cases. The Council in *O’Connor Hospital* rested its holding on provisions of the Medicare Benefit Policy Manual, Medicare Financial Management Manual, and Medicare Claims Processing Manual, finding that a failure to reimburse the hospital for medically necessary services was inconsistent with the Medicare manual guidance.

The Appeals Council’s decision in *O’Connor Hospital* lays out an important framework of Manual provisions which support coverage of hospital services under Medicare Part B when the inpatient admission is denied. The two recent Council cases, *Providence Health Center v. Trailblazer Health Enterprises* (June 29, 2012) and *Indiana University Health Methodist Hospital v. National Government Services* (May 17, 2012), build on the *O’Connor Hospital* decision in two important ways. In *Providence Health Center*, the Council adopted the ALJ’s unfavorable coverage decision as it pertained to the inpatient admission under Medicare Part A, but directed the contractor to review the services at issue and provide reimbursement on an outpatient basis under Medicare Part B for those services found to be medically reasonable and necessary. But the significance of the *Providence Health Center* case goes beyond the order for reimbursement under Medicare Part B. The Council in *Providence Health Center* went a step further to award coverage of the hospital services under Medicare Part B where the ALJ had not issued an order for Part B reimbursement below. In *Providence Health Center*, the ALJ determined that the inpatient hospital admission was not medically necessary where the services could have been furnished on an outpatient basis, but did not order reimbursement of the hospital services provided on an outpatient basis. In contrast, the ALJ in *O’Connor Hospital* issued a partially favorable decision, finding that observation and underlying care was warranted, which the Council declined to review and concluded was binding. This distinction is particularly notable because the Appeals Council in *Providence Health Center* independently directed the contractor to review the services and provide payment under Part B for those found to be

medically necessary and reasonable, further illustrating its position that Part B reimbursement should be provided when a Part A inpatient admission is denied.

The Appeals Council's decision in *Indiana University Health Methodist Hospital v. National Government Services* also provides important, supporting analysis for Part B reimbursement where an inpatient admission is denied. In *Indiana University Health*, the Council concluded that while the inpatient level of service was not medically necessary, the medical care provided was necessary and appropriate and qualified for coverage as outpatient services under Part B. In addition to citing the supporting Medicare Manual provisions outlined in *O'Connor Hospital*, the Council in *Indiana University Health* found that in accordance with the RAC Statement of Work, when the RAC determined an overpayment existed, it should have offset the inpatient payment against the allowable outpatient charges rather than deny reimbursement for the full amount of the Part A claim. The Appeals Council's decision effectively incorporates the obligations and responsibilities of the RAC Statement of Work as supporting authority for the finding that the contractor should have arranged for offset of the Part B reimbursement against the Part A overpayment.

While Medicare Appeal Council decisions do not create binding precedent, they do provide insight into the Council's interpretation of this critical issue for hospitals. As such, it remains crucial for hospitals and health systems to challenge RAC denials of inpatient short-stay cases on the issue of coverage of the inpatient admission under Medicare Part A as well as alternatively for reimbursement under Medicare Part B for outpatient services including observation and underlying care. Currently, if the RAC denies coverage of an inpatient admission, the hospital receives no Part B reimbursement for the services provided unless it appeals the claim through the Medicare appeals process. In our appeals experience, Administrative Law Judges ("ALJ") across the country have ordered reimbursement for outpatient observation services and underlying care when it was determined that the inpatient admission was not medically necessary. The recent Appeals Council decisions reiterate the Council's position that payment under Part B is appropriate when inpatient services are denied. It is imperative that hospitals advance the legal arguments for Part B reimbursement on appeal or risk leaving dollars on the table.

O'Connor Hospital MAC decision

<http://www.hhs.gov/dab/divisions/medicareoperations/macdecisions/oconnorhospital.pdf>

Providence Health Center MAC decision

http://www.hhs.gov/dab/divisions/medicareoperations/macdecisions/m_12_809.pdf

Indiana University Health Methodist Hospital MAC decision

<http://www.hhs.gov/dab/divisions/medicareoperations/macdecisions/m-12-872.pdf>