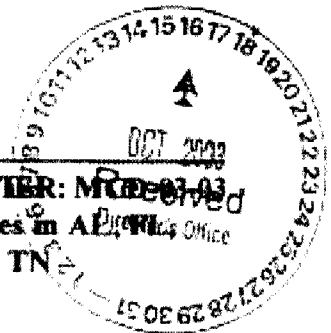


CMS PROGRAM ISSUANCE
Transmittal Notice
REGION IV



DATE: October 6, 2003

PROGRAM IDENTIFIER: Medicare
TO: Title XIX Agencies in AL, AR, MS, NC, SC, TN, VA, KY, MS, NC, SC, TN

SUBJECT: Preservation and Release of Medicaid Eligibility Information for Purposes of Pending Litigation of the Medicare DSH Payment Adjustment

In Agency Ruling 97-2 (Feb. 27, 1997), CMS revised Medicare disproportionate share ("DSH") payment policy to recognize patient days where an individual was eligible for Medicaid under an approved State plan, regardless of whether particular items or services were payable by Medicaid. Many hospitals have challenged the scope of applicability of this Ruling. For example, more than 250 lawsuits, involving about 2500 fiscal periods, are now pending in the United States District Court for the District of Columbia.

To the extent hospitals may ultimately become entitled to have the Ruling applied for particular fiscal periods, the hospitals will have the burden of proving the total number of Medicaid patient days for each fiscal year at issue. Information about Medicaid "paid days" (i.e., days where the State Medicaid plan provided for payment on behalf of the patient) is often available from the hospital's own records. However, in order to establish the number of Medicaid "unpaid days" (i.e., days where a patient was eligible for Medicaid but the State plan did not provide for payment on behalf of the patient), the provider needs information contained in the State's Medicaid eligibility records.

CMS requests the full cooperation of the State Medicaid agencies and/or the States' contractors in responding to hospital requests for Medicaid eligibility information. Specifically, the States are strongly encouraged to retain Medicaid eligibility records until the pending Medicare DSH litigation comes to an end, even if current record retention schedules might otherwise allow the earlier destruction of eligibility records. Also, because of the litigation, States may release information for this purpose to a hospital for a period of eligibility more than twelve months prior to the provider's request, notwithstanding section 2080.18 of the State Medicaid Manual.

If you have any questions concerning this memorandum, please call Donna Cross at (404) 562-7406.

Ronald L. Murray, for

Susan Cuerdon
Acting Associate Regional Administrator
Division of Medicaid & Children's Health