PUBLICATION

District Court Rejects Hospitals' Challenge to CMS's Rebilling Policy [Ober|Kaler]

October 03, 2014

On September 17, the United States District Court for the District of Columbia ruled that it lacked jurisdiction over a challenge brought by the American Hospital Association (AHA) and several hospitals and systems (the hospitals) to the application by CMS of a time limit barring the hospitals from rebilling Medicare Part B claims after there had been Part A denials.

The lawsuit had a lengthy history. Plaintiff hospitals initially brought suit in November 2012, challenging what they asserted was CMS's "payment denial policy," which allowed Medicare recovery audit contractors (RACs) to recover Part A payments for care that the RACs maintained should not have been provided on an inpatient basis. Often, when the RACs did this, they did not allow the hospitals to rebill Medicare for the outpatient services furnished under Medicare Part B, except for certain ancillary services.

While the hospitals' initial lawsuit challenging the payment denial policy was pending, CMS altered its position, issuing a proposed rule and Administrator's Ruling CMS-1455-R to allow hospitals to rebill claims under Medicare Part B if the rejected Part A claim were still on appeal or if the time for appeal had not elapsed. A few months later, however, in August 2013, CMS issued a final rule that contained the now widely recognized 2-midnight rule and certain other changes of note. In one of those changes, CMS stated that the normal one year timely filing rule for Medicare claims, which is set out in 42 C.F.R. § 424.44, applies to rebilled hospital outpatient claims.

Throughout the course of the changing rules, the hospitals continued to recast their arguments. Ultimately, the hospitals' amended complaint challenged the one-year timely filing limit as applied to the hospitals' ability to rebill claims for reasonable and necessary hospital services furnished under Medicare Part B.

The government moved to dismiss the case, arguing that the challenge was not properly before the court because, among other reasons, plaintiffs had not exhausted their administrative remedies. The court agreed. The court concluded that the hospitals were challenging a "systemwide CMS policy of general applicability" – the requirement that Part B claims submitted after Part A denials must be filed as new claims and must be filed within the timely filing limits of 42 C.F.R. § 424.24. The court said that the plaintiffs were essentially arguing that it was unlawful for CMS not to implement an exception to the filing limit. According to the court, however, CMS's decision not to exercise its discretion to create an additional category of exceptions was not a final agency decision after a hearing, subject to appeal under Medicare Part A. The court further noted that the plaintiffs could have appealed the agency's decision with respect to the billing of their specific claims and then obtained judicial review, but those claims must be channeled through an administrative process.

Ober|Kaler's Comments

Despite the high profile nature of this litigation, the ruling here was unremarkable, with the district court simply applying time-honored legal principles in dismissing the case. Although plaintiff hospitals had made a number of compelling arguments, those arguments, by and large, had not been funneled through the administrative process. Under such circumstances, it is rare for courts to accept jurisdiction.