No. 17-1484

In the Supreme Court of the United States

ALEX M. AZAR, II, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ALLINA HEALTH SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

NOEL J. FRANCISCO
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

Counsel of Record for Petitioner

STEPHANIE A. WEBSTER
Akin Gump Strauss Hauer & Feld
1330 New Hampshire Avenue, N.W.
Washington, D.C. 20036
swebster@akingump.com
(202) 887-4000

Counsel of Record for Respondents

PETITION FOR A WRIT OF CERTIORARI FILED: APR. 27, 2018
CERTIORARI GRANTED: SEPT. 27, 2018

TABLE OF CONTENTS

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 16-5255

ALLINA HEALTH SERVICES, DOING BUSINESS AS
UNITED HOSPITAL, DOING BUSINESS AS
UNITY HOSPITAL, DOING BUSINESS AS
ABBOTT NORTHWESTERN HOSPITAL, ET AL.,
PLAINTIFFS-APPELLANTS

v.

SYLVIA MATTHEWS BURWELL, ET AL.,
DEFENDANTS-APPELLEES

DOCKET ENTRIES

DATE	PROCEEDINGS
	* * * * *
1/23/17	APPELLANT BRIEF [1656971] filed by All Plaintiffs [Service Date: 01/23/2017] Length of Brief: 12,933. [16-5255] (Webster, Stephanie) [Entered: 01/23/2017 07:08 PM]
2/22/17	APPELLEE BRIEF [1662579] filed by Dr. Thomas E. Price [Service Date: 02/22/2017] Length of Brief: 12,844 Words. [16-5255] (Marcus, Stephanie) [Entered: 02/22/2017 06:09 PM]
	* * * * *
3/22/17	APPELLANT REPLY BRIEF [1667327] filed by All Plaintiffs [Service Date: 03/22/2017] Length of Brief: 6,484 words [16-5255]

DATE	PROCEEDINGS
	(Webster, Stephanie) [Entered: 03/22/2017 03:19 PM]
3/28/17	*JOINT* APPENDIX [1668188] filed by All Plaintiffs. [Volumes: 1] [Service Date: 03/28/2017] [16-5255] (Webster, Stephanie) [Entered: 03/28/2017 01:56 PM]
4/7/17	APPELLANT FINAL BRIEF [1670116] filed by All Plaintiffs [Service Date: 04/07/2017] Length of Brief: 12,942 Words [16-5255] (Webster, Stephanie) [Entered: 04/07/2017 01:39 PM]
4/7/17	APPELLANT FINAL REPLY BRIEF [1670121] filed by All Plaintiffs [Service Date: 04/07/2017] Length of Brief: 6,488 Words [16-5255] (Webster, Stephanie) [Entered: 04/07/2017 01:41 PM]
4/11/17	APPELLEE FINAL BRIEF [1670574] filed by Dr. Thomas E. Price [Service Date: 04/11/2017] Length of Brief: 12,857 Words. [16-5255] (Marcus, Stephanie) [Entered: 04/11/2017 02:34 PM]
	* * * * *
5/11/17	ORAL ARGUMENT HELD before Judges Henderson, Kavanaugh and Millett [16-5255] [Entered: 05/11/2017 11:19 AM]
	* * * * *
7/25/17	PER CURIAM JUDGMENT [1685629] filed that the judgment of the District Court appealed from in this cause is hereby reversed

DATE	PROCEEDINGS
	and the case is remanded for further proceedings, for the reasons in the accompanying opinion. Before Judges: Henderson, Kavanaugh, and Millett [16-5255] [Entered: 07/25/2017 09:56 AM]
7/25/17	OPINION [1685630] filed (Pages: 18) for the Court by Judge Kavanaugh. [16-5255] [Entered: 07/25/2017 09:58 AM]
	* * * * *
10/4/17	PETITION [1696995] for rehearing, for rehearing en banc filed by Appellee Dr. Thomas E. Price [Service Date: 10/04/2017 by CM/ECF NDA] Length Certification: 3,896 Words. [16-5255] (Marcus, Stephanie) [Entered: 10/04/2017 10:32 PM]
	* * * * *
11/3/17	RESPONSE [1703084] to petition for rehearing [1696995-2], petition for rehearing en banc [1696995-3] filed by All Plaintiffs [Service Date: 11/03/2017 by CM/ECF NDA] Length Certification: 3,741 words. [16-5255] (Webster, Stephanie) [Entered: 11/03/2017 08:41 PM]
11/29/17	PER CURIAM ORDER [1706551] filed denying appellee's petition for rehearing [1696995-2]. Before Judges: Henderson, Kavanaugh and Millett. [16-5255] [Entered: 11/29/2017 12:54 PM]

DATE	PROCEEDINGS
11/29/17	PER CURIAM ORDER, En Banc, [1706554] filed denying appellee's petition for rehearing en banc [1696995-3] Before Judges: Garland, Henderson, Rogers, Tatel, Griffith, Kavanaugh, Srinivasan, Millett, Pillard, and Wilkins. [16-5255] [Entered: 11/29/2017 12:56 PM]
12/14/17	MANDATE ISSUED to Clerk, U.S. District Court. [16-5255] [Entered: 12/14/2017 12:47 PM]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 1:14-cv-01415-TJK
ALLINA HEALTH SERVICES, ET AL., PLAINTIFFS

v.

SYLVIA MATHEWS BURWELL, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
8/19/14	1	COMPLAINT against SLIVVIA BURWELL (Filing fee $400 receipt number 0090-3813427) filed by ALLINA HEALTH SERVICES, FLORIDA HEALTH SCIENCES CENTER, INC., MONTEFIORE MEDICAL CENTER, NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS, NEW YORK AND PRESBYTERIAN HOSPITAL MOUNT SINAI MEDICAL CENTER OF FLORIDA, INC., NEW YORK METHODIST HOSPITAL. (Attachments: #1 Civil Cover Sheet, #2 Summons, #3 Summons, #4 Summons) (Webster,

DATE	DOCKET NUMBER	PROCEEDINGS
		Stephanie) (Entered: 08/19/2014)
		* * * * *
9/29/14	8	MOTION for Summary Judgment by ALL PLAINTIFFS (Attachments: #1 Text of Proposed Order) (pursuant to MINUTE ORDER filed 09/29/20147) (rdj) (Entered: 09/30/2014)
10/9/14	9	MEMORANDUM re 8 MOTION for Summary Judgment filed by ALL PLAINTIFFS by ALL PLAINTIFFS. (Attachments: #1 Exhibit A, #2 Certificate of Service) (Webster, Stephanie) (Entered: 10/09/2014)
		* * * * *
11/12/15	24	ANSWER to Complaint by SYLVIA M. BURWELL. (Freeny, Kyle) (Entered: 11/12/ 2015)
		* * * * *
12/15/15	28	Memorandum in opposition to re 8 MOTION for Summary Judgment filed by SYLVIA M. BURWELL. (Attachments: #1 Certificate of Administra-

DATE	DOCKET NUMBER	PROCEEDINGS
		tive Record Contents, #2 Administrator's Decision on Remand in Allina I, #3 Declaration Declaration of Ing Jye Cheng) (Kennedy, Brian) (Entered: 12/15/2015)
12/15/15	29	MOTION for Summary Judgment by SYLVIA M. BURWELL (Attachments: #1 Memorandum in Support, #2 Certification of Contents of Administrative Record, #3 Declaration Declaration of Ing Jye Cheng, #4 Administrator's Decision on Remand in Allina I, #5 Text of Proposed Order) (Kennedy, Brian) (Entered: 12/15/2015)
1/14/16	30	RESPONSE re 29 MOTION for Summary Judgment filed by ALLINA HEALTH SERVICES, FLORIDA HEALTH SCIENCES CENTER, INC., MONTEFIORE MEDICAL CENTER, MOUNT SINAI MEDICAL CENTER OF FLORIDA, INC., NEW YORK AND PRESBYTERIAN HOSPITAL, NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS, NEW YORK

DATE	DOCKET NUMBER	PROCEEDINGS
		METHODIST HOSPITAL. (Attachments: #1 Exhibit B, #2 Exhibit C) (Webster, Stephanie) (Entered: 01/14/2016)
1/14/16	31	REPLY to opposition to motion re 8 MOTION for Summary Judgment filed by ALLINA HEALTH SERVICES, FLORIDA HEALTH SCIENCES CENTER, INC., MONTEFIORE MEDICAL CENTER, MOUNT SINAI MEDICAL CENTER OF FLORIDA, INC., NEW YORK AND PRESBYTERIAN HOSPITAL, NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS, NEW YORK METHODIST HOSPITAL (Attachments: #1 Exhibit B, #2 Exhibit C) (Webster, Stephanie) (Entered: 01/14/2016)
		* * * * *
2/4/16	33	REPLY to opposition to motion re 29 MOTION for Summary Judgment filed by SYLIA M. BURWELL (Kennedy, Brian) (Entered: 02/04/2016)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
8/17/16	38	ORDER granting 29 Defendant's Motion for Summary Judgment and denying 8 Plaintiffs' Motion for Summary Judgment. Signed by Judge Gladys Kessler on 08/17/16. (CL) (Entered: 08/17/2016)
8/17/16	39	MEMORANDUM OPINION to the Order denying Plaintiffs' Motion for Summary Judgment and granting Defendant's Motion for Summary Judgment. Signed by Judge Gladys Kessler on 08/17/16. (CL) (Entered: 08/17/2016)
8/26/16	40	NOTICE OF APPEAL TO DC CIRCUIT COURT as to 38 Order on Motion for Summary Judgment 39 Memorandum & Opinion by ALL PLAINTIFFS. Filing fee $505, receipt number 0090-4652772. Fee Status: Fee Paid. Parties have been notified. (Webster, Stephanie) (Entered: 08/26/2016)

DEPARTMENT OF HEALTH
& HUMAN SERVICES

Health Care
Financing Administration

Memorandum

Mar. 13, 2000

FROM : Director
Financial Services Group, OFM

Deputy Director
Medicare Contractor Management, CBS

SUBJECT : Questions and Answers Related to
Program Memorandum A-99-62

TO : All Medicare Fiscal Intermediaries

Attached are the questions and answers related to the Program Memorandum to Intermediaries A-99-62 which were either presented at the January 13, 2000 teleconference or subsequently sent to Mr. Chuck Booth.

If there are additional questions based on actual situations, please E-Mail them to CBooth@HCFA.gov.

/s/ CHARLES R. BOOTH
CHARLES R. BOOTH
Director
Financial Services Group
Office of Financial Management

/s/ GERALDINE NICHOLSON for
MARJORIE KANOF, M.D.
Deputy Director
Medicare Contractor Management
Center for Beneficiary Services

Attachment

cc:
All Regional Administrators

QUESTIONS AND ANSWERS

RELATED TO PROGRAM MEMORANDUM
INTERMEDIARIES A-99-62
(Referred to as PM A-99-62)

Q1. If an intermediary accepted remittance advices as documentation for the out-of-State Medicaid days in the past, what will the intermediary be required to do to verify the "excluded days" as defined in PM A-99-62 for cost reporting periods beginning on or after January 1, 2000?

A. HCFA will update the Hospital and Skilled Nursing Facility Audit Program to give intermediaries guidance on what procedures to use when auditing the Medicaid days used in the computation of the Medicare DSH payments.

Also, a copy of PM A-99-62 was transmitted to all the State Medicaid Agencies directing them to review this transmittal and to assure that the information they report to the hospitals or the fiscal intermediaries complies with these instructions. Those agencies were also instructed to send this transmittal to managed care organizations with which they contract so that the managed care organizations can also take any necessary action. HCFA expects that the State Medicaid Agencies will start maintaining their systems in a way that segregates the "excluded days".

Q2. In the "Clarification for Cost Reporting Periods Beginning on or After January 1, 2000" under the heading "included days", the last sentence in the second paragraph states that " . . . you must

determine whether any of the days are dual entitlement days and, to the extent they are, subtract them from the other days included in the calculation." This seems to imply that it is the intermediaries' responsibility to determine if any patients are dual eligible (Medicaid and Medicare Part A). How are the intermediaries to make this determination?

A. HCFA will update the Hospital and Skilled Nursing Facility Audit Program to give intermediaries guidance on what procedures to use when auditing the Medicaid days used in the computation of the Medicare DSH payments.

Q3. Does a day count for the purpose of Medicare DSH payment if the patient was entitled to both Medicaid and Medicare Part B on that day?

A. Yes. Per 42 CFR 412.106(b)(4), a day does not count in the Medicare DSH payment calculation only if the patient is entitled to both Medicaid and Medicare part A on that day. The inclusion of the Medicaid days for patients entitled to Medicare Part B only in the DSH formula does not result in double counting because the Medicare Part B days are not included in the Medicare Part A/SSI portion of the formula.

Q4. Are days associated with patients in the excluded psychiatric and rehabilitation units to be excluded from the computation of the Medicare Disproportionate Share Hospital payments?

A. Yes. As mentioned in PM A-99-62 (page 3, second paragraph), the hospitals are being held harmless only for the general assistance or other

State-only health programs, charity care, Medicaid DSH, and/ or ineligible waiver or demonstration days which were included in the computation of the Medicare DSH payment and not for any other aspect of the calculation of the Medicare DSH payments. Per 42 CFR 412.106(a)(1)(ii), the number of patient days includes only those days attributable to the areas of the hospital that are subject to the prospective payment system and excludes all others. Therefore, excluded units' days have to be excluded from both the Medicaid and total inpatient days used to compute the Medicare DSH payment.

Q5. Should the intermediary treat Provider B as a new facility for FYE 12-31-98 cost report purposes and eliminate the general assistance days from the computation of the Medicare DSH payment in the following situation? Provider A sold its facility to Provider B. Provider B is now part of a chain. The rest of the facilities in the chain did not get paid for general assistance days in their settled cost reports. Provider B kept provider A's provider number and provider A's old owner included general assistance days in the computation of Medicare DSH payment in the past.

A. Since Provider B kept Provider A's provider number it should not be considered as a new provider. Therefore, if Provider A always received payment reflecting the erroneous inclusion of general assistance days in the past, the intermediary should continue to include those type of

days in the FYE 12-31-98 and 12-31-99 cost reports.

Q6. What needs to be done if in the past the FI erroneously allowed general assistance days for a number of years but upon realizing the error reopened all cost reports to exclude those days? Does it matter if the reopening happened many years back and the intermediary's policy since has been to exclude these days?

A. PM A-99-62 states in the second sentence, second paragraph on page 3 that if prior to the issuance of this PM, the intermediary reopened a settled cost report to disallow the portion of Medicare DSH payment attributable to the inclusion of these type of days, the intermediary is to reopen that cost report again and refund the amount (including interest) collected. Thus, if the cost reports which the intermediary reopened are still subject to reopening in accordance with 42 CFR 405.1885, the intermediary must reopen those cost reports.

Q7. What if we have cases where general assistance days were excluded by estimates. Are we prohibited from correcting those cost reports with accurate data? Or should we leave those cost reports for closed periods alone? How do we handle such providers' open cost reports?

A. As mentioned in the second paragraph on page 3 of PM A-99-62, the intermediary should not reopen cost reports to disallow the portion of Medicare DSH payment attributable to the erroneous inclusion of the ineligible days. Therefore, even

if the intermediary did not disallow all the ineligible days in a settled cost report because the estimates understated the number of general assistance days, that cost report should not be reopened. The intermediary also should not reopen a cost report if the estimates overstated the number of general assistance days which were disallowed unless the hospital filed a jurisdictionally proper appeal to the PRRB on this issue for that cost report before October 15, 1999.

As stated in the last sentence of the third paragraph on page 3 of PM A-99-62, the actual number of general assistance and other State-only health programs, charity care, Medicaid DSH, and/or ineligible waiver or demonstration days, as well as Medicaid Title XIX days, that the intermediary allows for open cost reports must be supported by auditable documentation provided by the hospital.

Q8. Can a hospital add general assistance and/or other ineligible days to settled cost reports for fiscal years beginning before January 1, 2000 if the intermediary did not pay for those days previously?

A. No. As stated in PM A-99-62, on or after October 15, 1999, the intermediary should not accept reopening requests on this issue.

Q9. Should an intermediary accept amended cost reports for the issue of general assistance and/or other ineligible days after October 15, 1999?

A. No. See PM A-99-62, page 3, last sentence of second paragraph and page 4, first full sentence on the page.

Q10. If prior to October 15, 1999 a hospital requested that the intermediary reopen a cost report to include general assistance days in the computation of Medicare DSH but the intermediary denied the reopening request, should the intermediary now reopen that cost report and pay the hospital?

A. Yes. The intermediary should now reopen the cost report at issue if the reopening was requested before HCFA communicated the hold harmless position (i.e., before October 15, 1999).

Q11. A provider has 180 days to file an appeal with the Provider Reimbursement Review Board (PRRB). Why must the hospital appeal before October 15, 1999 if the 180 days from the date of the Notice of Program Reimbursement for a given cost report has not expired before October 15, 1999?

A. A jurisdictionally proper appeal on the issue of general assistance or other State-only, charity care, Medicaid DSH, and/or ineligible waiver or demonstration days for a cost reporting period beginning before January 1, 2000, must have been filed before October 15, 1999 in order for the hospital to be held harmless for that specific cost report. However, if the hospital filed a jurisdictionally proper appeal on this issue before October 15, 1999 for a prior cost reporting period, the intermediary should also reopen that hospital's cost report for any cost reporting period beginning before January 1, 2000 for which an ap-

peal was filed after October 15, 1999. For example, the hospital filed a jurisdictionally proper appeal on this issue for fiscal year ended (FYE) 12-31-96 before October 15, 1999 but because the cost report for FYE 12-31-97 was settled on October 1, 1999 the hospital did not get a chance to appeal this issue for that fiscal year before October 15, 1999. In this situation, the intermediary will reopen both the FYE 12-31-96 and FYE 12-31-97 cost reports even if an appeal for the FYE 12-31-97 cost report was filed after October 15, 1999. The intermediary will not, however, reopen the FYE 12-31-97 cost report if the hospital did not appeal this issue in the FYE 12-31-96 cost report before October 15, 1999.

Q12. What is the significance of the October 15, 1999 date as it relates to appeals?

A. October 15, 1999 is the date that HCFA first communicated the hold harmless position. Therefore, in order to have an appeal resolved by the intermediary under the hold harmless rules described in PM A-99-62, a hospital must have filed an appeal on this issue for at least one of its cost reports for a cost reporting period beginning before January 1, 2000 before the October 15, 1999 date that HCFA first announced the hold harmless position.

Q13. Are we trying to prevent hospitals from filing jurisdictionally proper appeals to the PRRB on the issue of these type of ineligible days on or after October 15, 1999?

A. No. The intent of PM A-99-2 is to have the intermediaries resolve appeals which were filed before October 15, 1999 in accordance with the hold harmless provisions. The PM does not otherwise preclude the hospital from filing an appeal on this issue to the PRRB after October 15, 1999. Note also, that the PM specifics on page 4, that the intermediary will also apply the hold harmless provisions to any cost reporting period beginning before January 1, 2000 for which a jurisdictionally proper appeal was filed after October 15, 1999, if the hospital appealed before October 15, 1999, the denial of payment for these type of ineligible days in previous cost reporting periods.

Q14. Should the intermediary automatically allow the general assistance days in the final settlement of a cost report if the hospital included the general assistance days issue on the "protested amount" line, or must the hospital formally appeal this issue?

A. As specified in PM A-99-62, the hospital must have filed a jurisdictionally proper appeal on the issue of these type of ineligible days to get the benefit of the hold harmless provision. Therefore, the intermediary should not automatically include these type of days in the settlement of the cost report only because the hospital included the reimbursement effect of these type of ineligible days on the "protested amount" line.

Q15. How are the intermediaries to handle a situation where the hospital filed a jurisdictionally proper general DSH appeal without specifically addressing the ineligible days (i.e., general assistance or

other State-only health program, charity care, Medicaid DSH, and/or ineligible waiver or demonstration population days)?

A. PM A-99-62 specifies on page 3 and page 4 that the hold harmless provision applies only to jurisdictionally proper appeals on the issue of the exclusion of these types of days from the Medicare DSH formula. This reinforces the statement in the last sentence of the first paragraph on page 3 of the PM which states " . . . this decision is not intended to hold hospitals harmless for any other aspect of the calculation of Medicare DSH payments . . . ". Therefore, the intermediaries should not apply the hold harmless provisions in situations of general Medicare DSH appeals unless the hospital furnishes proof that the appeal includes the issue of these type of ineligible days. Even if the appeal is somewhat more specific and addresses Medicaid days, the intermediary should make every effort to determine whether the general assistance or other State-only health program, charity care, Medicaid DSH, and/or ineligible waiver or demonstration days are at issue. If for the Medicaid days DSH appeals it is difficult to determine whether the general assistance, etc. days are at issue, the intermediary should E-Mail or otherwise send a request for guidance to the appropriate HCFA regional office.

Q16. How are the open cost reports for fiscal years beginning prior to 1-1-00 to be handled in a situation where the intermediary disallowed the ineligible days during the audit of the latest settled

cost report (e.g., FYE 12-31-97) but allowed them in the preceding cost report(s) (e.g., FYE 12-31-96 or FYE 12-31-96 and several prior fiscal years)?

A. If before October 15, 1999 the hospital filed a jurisdictionally proper appeal on the issue of exclusion of these type of days for the FYE 12-31-97 cost report the intermediary should reopen that cost report and revise the Medicare DSH payment to reflect the inclusion of these types of days. Since the hospital established an expectation that these type of days should be included in the computation of the Medicare DSH payments, the intermediary should also continue to include these type of ineligible days in the computation of the Medicare DSH payment in the open cost reports for FYE 12-31-98 and FYE 12-31-99 as long as the hospital included these days in the "as submitted" cost reports for those years thus continuing this expectation. If the hospital abandoned its expectation of receiving payment in those open cost reports (FYE 12-31-98 and FYE 12-31-99) and did not even include this issue on the "protested amount" line, the intermediary should not continue paying the Medicare DSH adjustment reflecting the inclusion of these type of days for those years.

If the hospital did not file a jurisdictionally proper appeal before October 15, 1999 for the FYE 12-31-97 cost report on the issue of exclusion of these types of days from the Medicare DSH payment computation, its expectation is construed to have been extinguished and the intermediary should not revise the FYE 12-31-97 cost report

and should not continue to pay the Medicare DSH adjustment reflecting the inclusion of these type of days in the open cost reports (FYE 12-31-98 and 12-31-99).

Q17. If it has always been the intermediary's practice for a given hospital to exclude the ineligible days from the computation of the Medicare DSH payment but through an oversight (e.g., cost report was not audited, auditor made an error) the intermediary made payment based on the inclusion of these type of days in the Medicare DSH formula for one year, should these days, be included in the computation of the Medicare DSH payment in all the open cost reports for fiscal years beginning before January 1, 2000?

A. In accordance with PM-A-99-62, page 3, second paragraph, the intermediary should not reopen the one cost report where payment was made based on the inclusion of the ineligible days in the Medicare DSH formula. However, the erroneous payment in that one year does not establish "a practice which was followed for the hospital at issue" as intended by the phrase used in the third paragraph on page 3 of PM A-99-62. Therefore, the intermediary should not allow these type of days in the Medicare DSH calculation for open cost reports for cost reporting periods beginning before January 1, 2000, unless before October 15, 1999, the hospital filed a jurisdictionally proper appeal on the issue of these type of days for the cost reporting periods in which the intermediary denied the payment.

Q18. If appeal criteria is met, are all reopenable cost reports affected or are we just allowing the general assistance days in the years under appeal?

A. As mentioned in the first full paragraph on page 4 of PM A-99-62, the intermediary should reopen only the cost report(s) at issue in the appeal. For example, if the hospital appealed the cost report for FYE 12-31-97 but did not appeal the cost report for FYE 12-31-96, the intermediary should reopen only the cost report for FYE 12-31-97.

Q19. The hold harmless provisions described in PM A-99-62 may result in a substantial amount of money being given back to the hospitals. How is this going to be accounted for in the CASR at the end of the year? If left as is, the CASR will appear to show that the intermediaries gave money to the providers as a result of the audit effort. This will materially alter the audit effectiveness ratio. How is this going to be removed from the CASR?

A. HCFA will modify the CASR instructions through the STAR alert to accommodate this issue.

DEPARTMENT OF HEALTH
& HUMAN SERVICES
Centers for Medicare &
Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

TDL-13179, 01-18-13

MEMORANDUM

DATE: Jan. 30, 2013

FROM: Acting Director, Financial Services Group
Office of Financial Management

Director, Hospital and Ambulatory
Payment Group
Center for Medicare

Director, Medicare Contractor
Management Group
Center for Medicare

SUBJECT: Medicare Cost Report Final Settlements and Instructions Pertaining to Specific Disproportionate Share Hospitals (DSH)

TO: All Fiscal Intermediaries (FIs), and Part A and Part B Medicare Administrative Contractors (A/B MACs)

Technical Direction Letter (TDL)-13105, issued on December 17, 2012, instructed contractors to immediately stop the issuance of Notices of Program Reimbursement (NPRs) for any cost reports that utilize a Social Security Income (SSI) ratio for determining DSH hospital payments, until further notice.

Effective immediately, contractors shall resume the issuance of all NPRs, with the exception of the 29 hospitals that are plaintiffs in two recent court cases, Allina Health Services v. Sebelius and Florida Health Science Center v. Sebelius (plaintiff hospitals are listed on Attachment A). For the non-plaintiff hospitals (all hospitals except those noted on Attachment A), contractors shall issue a Notice of Intent to Reopen the cost report along with the NPR. The Notice of Intent to Reopen shall use the following reason for reopening:

> "In the event of an unfavorable final nonappealable decision in Allina Health Services v. Sebelius, the cost report will be reopened to adjust the Disproportionate Share payment calculation."

In addition to holding the NPRs for the 29 plaintiff hospitals on Attachment A, the contractors shall:

- Update the Provider Specific File in PRICER with the SSI ratios included on Attachment A within 15 business days of the issuance date of this TDL.
- Contractors shall use the SSI ratios on Attachment A when completing tentative settlements and interim rate reviews.
- For those plaintiff hospitals on Periodic Interim Payments (PIP), the contractors shall use the SSI ratios on Attachment A when completing PIP rate reviews.

The Centers for Medicare & Medicaid Services will work with the individual contractors to address any other applicable cost report holds related to DSH.

Change Request 7814 (Transmittal 1096) was issued on June 8, 2012 and included timeframes for contractors to issue NPRs based on recently released SSI ratios. Due to the delay in the issuance of NPRs due to the Allina court case, the NPR timeframes in CR 7814 will be extended by 60 days.

NOTE: MEDICARE ADMINISI'RATIVE CONTRACTORS (MACs)

A/B MAC Contract Numbers

Jurisdiction F~HHSM-500-2011-M0004Z

Jurisdiction H~HHSM-500-2010-M0001Z

Jurisdiction 1~HHSM-500-2008-M0002Z

Jurisdiction 5~HHSM-500-2007-M0002Z

Jurisdiction 8~HHSM-500-2011-M0006Z

Jurisdiction 9~HHSM-500-2008-M0008Z

Jurisdiction 10~HHSM-500-2009-M0004Z

Jurisdiction 11~HHSM-500-2010-M0001Z

Jurisdiction 12~HHSM-500-2008-M0001Z

Jurisdiction 13~HHSM-500-2008-M0004Z

Jurisdiction 14~HHSM-500-2009-M0002Z

Jurisdiction 15~HHSM-500-2010-M0002Z

This Technical Direction Letter (TDL) is being issued to you as technical direction under your MAC contract and has been approved by your Contracting Officer's Representative (COR). This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention

is directed to the clause of the General Provisions of your contract entitled Limitation of Funds, FAR 52.232-22 or Limitation of Cost, FAR 52.232-20 (as applicable). If the Contractor considers anything contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractorshall immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Should you require further technical clarification, you may contact your COR. Contractual questions should be directed to your CMS Contracting Officer. Please copy the COR and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

If you are an FI and have any questions, please contact Dorothy Braunsar at (410) 786-4037.

/s/	/s/	/s/
Charlotte Benson	Marc Hartstein	Karen Jackson

Attachment

cc:

Dorothy W. Pines, NHIC, Corp.

Robert Madgett, CGS Administrators, LLC

Paul O'Donnell, Noridian Administrative Services, LLC

Karla Thormodson, Noridian Administrative Services, LLC

Kris Martin, Wisconsin Physicians Service Insurance Corporation

Frances Dye, Wisconsin Physicians Service Insurance Corporation

Amanda Bolger, Wisconsin Physicians Service Insurance Corporation

Mike Barlow, Palmetto GBA, LLC

Larry Leslie, Palmetto GBA, LLC

Ed Sanchez, Palmetto GBA, LLC

Laura Minter, Novitas Solutions, Inc.

Gayeta Porter, Novitas Solutions, Inc.

David Vaughan, Novitas Solutions, Inc.

Beth Dum, Novitas Solutions, Inc.

Jim Elmore, National Government Services, Inc.

Scott Kimbell, National Government Services, Inc.

Stacie Amburn, National Government Services, Inc.

Lamar James, First Coast Service Options, Inc.

Marco Turner, First Coast Service Options, Inc.

Harvey Dikter, First Coast Service Options, Inc.

Robert Harrington, NHIC, Corp.

Craig Hess, Cahaba Government Benefit Administrators, LLC

Dana Pippins, Cahaba Government Benefit Administrators, LLC

Jai Spivey, Cahaba Government Benefit Administrators, LLC

Melissa Lamb, CGS Administrators, LLC

Yolanda Rocha, Railroad Retirement Board

All RAs

Nanette Foster Reilly, Consortium Administrator for Financial Management and Fee-for-Service Operations

Brenda Clark, OAGM

Craig Dash, OAGM

Edward (Chip) Farmer, OAGM

Antoinette Hazelwood, OAGM

Salem Fussell, OAGM

Linda Hook, OAGM

Stacy Greber, OAGM

Christina Honey, OAGM

Steve Weber, OAGM

Michele Lanasa, OAGM

Tasha Logan, OAGM

Kathy Markman, OAGM

Shelby Minchew, OAGM

Jacob Reinert, OAGM

Michael Shirk, OAGM

Phillip Smith, OAGM

Jaime Galvez, OAGM

Steve Stoyer, OAGM

Desiree Wheeler, OAGM

Johnny Vo, OAGM

Jason Vollmer, OAGM

John Webster, OAGM

Sue Pelella, CM/MCMG
Jim Ralls, CM/MCMG
Pam Bragg, CM/MCMG
Amy Drake, CM/MCMG
Marybeth Jason, CM/MCMG
Brian Johnson, CM/MCMG
James Massa, CM/MCMG
Susan Oken, CM/MCMG
Steven Smetak, CM/MCMG
Bobbie Sullivan, CM/MCMG
James Throne, CM/MCMG
Margot Warren, CM/MCMG
Marilyn Bryan, CM/MCMG
David Banks, CM/MCMG
Jody Kurtenbach, CM/MCMG
Larry Young, CM/MCMG
Carol Messick, CM/MCMG
Mark Korpela, OFM/FSG
Dorothy Braunsar, OFM/FSG

Attachment A				
				Revised
Provider Name	CCN	Contractor	Cont #	2010 SSI
Shands Jacksonville	100001	FCSO - J9	9001	0.21135
Mount Sinai Florida	100034	FCSO - J9	9001	0.24962
Shands UF	100113	FCSO - J9	9001	0.0969
Tampa General Hospital	100128	FCSO - J9	9001	0.12222
Henry Ford Hospital	230053	WPS - J8	8001	0.1576
Allina Cambridge	240020	Noridian - FI	320	0.02374
Allina United	240038	Noridian - FI	320	0.06178
Allina Abbott Northwestern	240057	Noridian - FI	320	0.05706
Allina Owatonna	240069	Noridian - FI	320	0.02053
Allina Unity	240132	Noridian - FI	320	0.03866
Kaleida	330005	NGS - J13	13001	0.1216
Southside Hosp.	330043	NGS - J13	13001	0.07811
NY Hosp. of Queens	330055	NGS - J13	13001	0.23337
Montefiore	330059	NGS - J13	13001	0.22562
NYPres	330101	NGS - J13	13001	0.17226
North Shore Univ.	330106	NGS - J13	13001	0.06469
Staten Island Univ.	330160	NGS - J13	13001	0.1326
Highland Hosp. of Rochester	330164	NGS - J13	13001	0.13322
Maimonides	330194	NGS - J13	13001	0.32221
Long Island Jewish	330195	NGS - J13	13001	0.13895
Kingsbrook Jewish	330201	NGS - J13	13001	0.2539
NY Methodist	330236	NGS - J13	13001	0.26723
Strong Memorial	330285	NGS - J13	13001	0.11535
Lutheran Med Ctr.	330306	NGS - J13	13001	0.24105
Forest Hills	330353	NGS - J13	13001	0.25192
Franklin Hosp.	330372	NGS - J13	13001	0.11092
North Carolina Baptist	340047	Palmetto - J11	11501	0.1138
Methodist Dallas	450051	Novitas - JH	4011	0.14836
Methodist Charlton	450723	Novitas - JH	4011	0.12596

DEPARTMENT OF HEALTH
& HUMAN SERVICES
Centers for Medicare &
Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

TDL-13056, 08/27/2013

MEMORANDUM

DATE: September 3, 2013

FROM: Director, Financial Services Group
Office of Financial Management

Director, Hospital Ambulatory
Policy Group
Center for Medicare

Director, Medicare Contractor
Management Group
Center for Medicare

SUBJECT: Instructions Pertaining to the Fiscal Year (FY) 2011 Supplemental Security Income (SSI) Ratios for the Specific Disproportionate Share Hospitals that are Plaintiffs in Two Recent Court Cases (Allina Health Services v. Sebelius and Florida Health Center v. Sebelius)

TO: See Addressees

Technical Direction Letter (TDL)-13179, issued on January 30, 2013, instructed contractors to resume the issuance of all Notices of Program Reimbursement (NPRs), with the exception of the 29 hospitals that are plaintiffs

in two recent court cases, Allina Health Services v. Sebelius and Florida Health Science Center v. Sebelius.

TDL-13179 also instructed contractors to utilize the SSI ratios included in the attachment to the TDL to update the Provider Specific File in PRICER. In addition, TDL13179 provided instructions for completing tentative settlements and interim rate reviews, including Periodic Interim Payments (PIP) rate reviews for the 29 plaintiff hospitals.

The Centers for Medicare & Medicaid Services (CMS) recently published the FY 2011 SSI ratios on its Website and issued Change Request 8406 on August 2, 2013, instructing the Medicare Administrative Contractors (MACs) to update the Provider Specific file in PRICER with these ratios. CMS is issuing this TDL to instruct MACs to continue to hold the NPRs for the 29 plaintiff hospitals listed on Attachment A. In addition, the MACs shall:

- Update the Provider Specific File in PRICER with the SSI ratios included on Attachment A within 15 business days of the issuance date of this TDL.
- MACs shall use the SSI ratios on Attachment A when completing tentative settlements and interim rate reviews.
- For those plaintiff hospitals on PIP, the MACs shall use the SSI ratios on Attachment A when completing PIP rate reviews.

Provider Education

- **No national message will be distributed from CMS.**
- **Local contractor messaging about this TDL is prohibited.**

A/B MAC Contract Numbers

Jurisdiction 6~HHSM-500-2012-M0013Z

Jurisdiction 8~HHSM-500-2011-M0006Z

Jurisdiction 9~HHSM-500-2008-M0008Z

Jurisdiction 11~HHSM-500-2010-M0001Z

Jurisdiction H~HHSM-500-2010-M0001Z

Jurisdiction K~HHSM-500-2013-M00015Z

This Technical Direction Letter (TDL) is being issued to you as technical direction under your MAC contract and has been approved by your Contracting Officer's Representative (COR). This technical direction is not construed as a change or intent to change the scope of work under the contract and is to be acted upon only if sufficient funds are available. In this regard, your attention is directed to the clause of the General Provisions of your contract entitled Limitation of Funds, FAR 52.232-22 or Limitation of Cost, FAR 52.232-20 (as applicable). If the Contractor considers anything contained herein to be outside of the current scope of the contract, or contrary to any of its terms or conditions, the Contractor shall immediately notify the Contracting Officer in writing as to the specific discrepancies and any proposed corrective action.

Unless otherwise specified, contractors shall be in compliance with this TDL within 10 business days of its date of issuance.

Should you require further technical clarification, you may contact your COR. Contractual questions should be directed to your CMS Contracting Officer. Please copy the COR and Contracting Officer on all electronic and/or written correspondence in relation to this technical direction letter.

/s/	/s/	/s/
Charlotte Benson	Marc Hartstein	Karen Jackson

Attachment(s)

Addressees:

Todd Reiger, National Government Services, Inc.

Sandy Coston, Chief Executive Officer, Novitas Solutions, Inc.

Thomas Hinkson, Chief Financial Officer, Novitas Solutions, Inc.

Michael Kapp, President, National Government Services, Inc.

Jared Adair, Executive Vice President, Medicare Operations, Wisconsin Physicians Service Insurance Corporation

Janet Kyle, Wisconsin Physicians Service Insurance Corporation

Joe Johnson, President & Chief Operating Officer, Palmetto GBA, LLC

Sandy Coston, President & Chief Operating Officer, First Coast Service Options, Inc.

cc:

All RAs, CMS

Amanda Bolger, Wisconsin Physicians Service Insurance Corporation

Amy Drake, CM/MCMG

Brenda Clark, OAGM

Brian Johnson, CM/MCMG

Christina Honey, OAGM

Courtney Garnes, OAGM

Craig Dash, OAGM

David Banks, CM/MCMG

David Vaughn, Novitas Solutions, Inc.

Dorothy Braunsar, OFM/FSG/DPAO

Ed Sanchez, Palmetto GBA, LLC

Harvey Dikter, First Coast Service Options, Inc.

James Massa, CM/MCMG

Jim Elmore, National Government Services, Inc.

Jody Grier, Novitas Solutions, Inc.

Jody Kurtenbach, CM/MCMG

Kathy Markman, OAGM

Kristen Lawrence, OAGM

Lamar James, First Coast Service Options, Inc.

Larry Young, CM/MCMG

Linda Hook, OAGM

Marco Turner, First Coast Service Options, Inc.

Margot Warren, CM/MCMG

Marilyn Bryan, CM/MCMG

Mark Defoil, Wisconsin Physicians Service Insurance Corporation

Marybeth Jason, CM/MCMG

Nanette Foster Reilly, Consortium Administrator for Financial Management & Fee-for-Service Operations

Peter Haas, OAGM

Ron Paige, Palmetto GBA, LLC

Salem Fussell, OAGM

Scott Kimball, National Government Services, Inc.

Shelby Minchew, OAGM

Stacey Greber, OAGM

Stacie Amburn, National Government Services, Inc.

Steve Stoyer, OAGM

Susan Oken, CM/MCMG

Tasha Logan, OAGM

allina_ssi

Provider Name	CCN	Contractor	Cont #	SSI FFS Days	Total FFS Days	SSI ratio
SHANDS JACKSONVILLE MEDICAL CENTER	100001	FCSO - J9	9001	8967	41103	0.21816
MOUNT SINAI MEDICAL CENTER	100034	FCSO - J9	9001	12063	44399	0.27170
SHANDS HOSPITAL AT THE UNIVERSITY O	100113	FCSO - J9	9001	8439	73127	0.11540
TAMPA GENERAL HOSPITAL	100128	FCSO - J9	9001	8105	69732	0.11623
HENRY FORD HOSPITAL	230053	WPS - J8	8001	11014	70592	0.15602
CAMBRIDGE MEDICAL CENTER	240020	NGS - J6	6201	98	3339	0.02935
UNITED HOSPITAL	240038	NGS - J6	6201	2034	33044	0.06155
ABBOTT NORTHWESTERN HOSPITAL INC	240057	NGS - J6	6201	3253	62103	0.05238
OWATONNA HOSPITAL	240069	NGS - J6	6201	25	2336	0.01070
UNITY HOSPITAL	240132	NGS - J6	6201	435	14156	0.03073
KALEIDA HEALTH	330005	NGS - J13	13001	7866	74283	0.10589
SOUTHSIDE HOSPITAL	330043	NGS - J13	13001	2197	26377	0.08329
NEW YORK HOSPITAL MEDICAL CENTER OF	330055	NGS - J13	13001	16252	69674	0.23326
MONTEFIORE MEDICAL CENTER	330059	NGS - J13	13001	27125	120329	0.22542
NEW YORK-PRESBYTERIAN HOSPITAL	330101	NGS - J13	13001	30754	191430	0.16065
NORTH SHORE UNIVERSITY HOSPITAL	330106	NGS - J13	13001	8801	117729	0.07476
STATEN ISLAND UNIVERSITY HOSPITAL	330160	NGS - J13	13001	6885	51977	0.13246
HIGHLAND HOSPITAL	330164	NGS - J13	13001	2330	20204	0.11532
MAIMONIDES MEDICAL CENTER	330194	NGS - J13	13001	25018	78232	0.31979
LONG ISLAND JEWISH MEDICAL CENTER	330195	NGS - J13	13001	8128	58037	0.14005
KINGSBROOK JEWISH MEDICAL CENTER	330201	NGS - J13	13001	5994	22117	0.27101
NEW YORK METHODIST HOSPITAL	330236	NGS - J13	13001	16216	58932	0.27516
STRONG MEMORIAL HOSPITAL	330285	NGS - J13	13001	6921	53853	0.12852
LUTHERAN MEDICAL CENTER	330306	NGS - J13	13001	8351	38980	0.21424
FOREST HILLS HOSPITAL	330353	NGS - J13	13001	7613	31376	0.24264
FRANKLIN HOSPITAL	330372	NGS - J13	13001	2592	23880	0.10854
NORTH CAROLINA BAPTIST HOSPITAL	340047	Palmetto - J11	11501	8740	78695	0.11106
METHODIST DALLAS MEDICAL CENTER	450051	Novitas - JH	4011	5001	31396	0.15929
METHODIST CHARLTON MEDICAL CENTER	450723	Novitas - JH	4011	3652	27907	0.13086