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## Deadline Approaches for Resolution of *Baystate* DSH/SSI Case

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May 1, 2009 looms as an important deadline in the ongoing struggle between providers and the Centers for Medicaid Services (CMS) over the calculation of the disproportionate share hospital (DSH) adjustment. By that date, the parties to *Baystate Medical Center v. Leavitt* must report to the U.S. District Court for the District of Columbia regarding its December 2008 ruling, which required CMS to recalculate the provider's DSH adjustment. The DSH adjustment increases payments under the inpatient prospective payment system to hospitals that serve a disproportionate share of underprivileged patients. It is calculated using two fractions: the Medicare/Supplemental Security Income (SSI) fraction, which was at issue in the *Baystate* court's ruling, and the Medicaid fraction, which was not.

The *Baystate* court granted partial summary judgment to the provider and required the government to recalculate the Medicare/SSI fraction using updated, and superior, data. The court, however, did not fully resolve all of the issues before it. Although the parties disagreed about the proper treatment of patient days attributable to beneficiaries under pre-Balanced Budget Act Medicare managed care plans (Managed Care Days), the court ultimately declined to rule on this issue, reasoning that the treatment of Managed Care Days should be addressed in litigation regarding the Medicaid fraction.

Additionally, the court did not rule on, but retained jurisdiction over, two of the provider's counts, which involved discovery requests during proceedings before the Provider Reimbursement Review Board (PRRB). If CMS recalculates the DSH adjustment to the provider's satisfaction by the May 1 deadline, those remaining counts will presumably be mooted and the matter will be dismissed.

**Ober|Kaler's Comments:** A number of cases are pending before the PRRB, awaiting a final ruling in the *Baystate* matter. How CMS recalculates the DSH adjustment, therefore, is important to more than just the *Baystate* plaintiffs and warrants close attention in the coming weeks.

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