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IME Research Time Revisited: Court Requires CMS to Explain Criteria

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In the latest episodes of the ups and downs of the Medicare Indirect Medical Education (IME) adjustment and the allowability of research time, the United States District Court for the District of Rhode Island has required that CMS explain the criteria it uses in denying reimbursement for research time that the provider maintains was related to patient care. *Rhode Island Hospital v. Sebelius*, 2009 WL 4062010 (Nov. 24, 2009). In an earlier phase of the case, the United States Court of Appeals for the First Circuit had upheld the Secretary's decision that research activities *unrelated to patient care* are not included in the IME adjustment. This case, however, involved only the question of reimbursement for research activities that the provider maintained were related to patient care.

In this case, the provider had submitted statements from program directors of specific departments describing the research activities, resident rotation schedules and questionnaires that the program directors completed demonstrating the percentage of research time directly related to patient care. The CMS Administrator nevertheless held that the hospital had failed to document any research related to patient care. The District Court rejected that position.

The District Court held that the CMS Administrator had failed to explain the criteria by which CMS judged the evidence submitted. The Court then vacated the CMS decision and remanded the matter to the Agency for further proceedings. The Court instructed CMS to provide a reasoned explanation that clearly set forth the evidentiary criteria applicable at the time the costs were incurred (in this case, 1996), explain how and why the documentation met or failed to meet those criteria, and state how many of the FTEs in each department qualified for reimbursement under this policy.

Ober|Kaler's Comments: The District Court decision in Rhode Island is helpful by suggesting that some research time may be patient-care related. By giving the Secretary a second bite at the apple, however, the Court's decision will provide the Agency with the opportunity to belatedly develop "clarifying" criteria and then apply those criteria to periods long since passed. No matter what CMS does, it is clear that the IME research issue will remain murky for

some time to come.

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