

Health Headlines

April 30, 2012

IPPS Proposed Rule Clarifies Immediate Jeopardy in the VBP Program

In the Hospital Inpatient Prospective Payment Systems proposed rule issued by CMS on April 24 (Proposed Rule), CMS proposes a number of policies related to the Hospital Value-Based Purchasing Program (VBP Program), including clarifications regarding exclusion on the basis of “immediate jeopardy” (IJ) citations. Under the Social Security Act, a hospital is excluded from the VBP Program if it has been cited during the performance period for deficiencies that pose immediate jeopardy to the health or safety of patients. In the Proposed Rule, CMS proposes that “immediate jeopardy” be defined in the VBP Program regulations as it is currently defined for survey, certification, enforcement, and termination procedures in 42 C.F.R. § 489.3; that is, as “a situation in which the provider’s noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.” Additionally, CMS also addresses what an IJ “citation” signifies for purposes of the VBP Program. After discussing the various situations in which a hospital may be cited and may correct an IJ finding identified during the survey process, CMS concludes that “citation” of immediate jeopardy within the context of the VBP Program means the identification of an immediate jeopardy situation, as noted on the Form CMS-2567 that is issued to the hospital after a survey. CMS considered whether, for purposes of the VBP Program, it would be reasonable to treat only those hospitals that failed to remove the IJ situation while a survey team was still on-site as having been “cited for an immediate jeopardy,” but CMS concluded that this approach was inequitable. In the Proposed Rule, CMS also notes that the statutory requirements of the VBP Program refer to a hospital that has been cited for “deficiencies” in the plural form. CMS proposes that for purposes of the VBP Program, “cited for deficiencies that pose immediate jeopardy” means that during the applicable performance period, the hospital had more than one survey for which it was cited for an immediate jeopardy situation on the Form CMS-2567, Statement of Deficiencies and Plan of Correction. While CMS notes that each tag included on a CMS-2567 may be considered a separate deficiency, CMS acknowledges that the tags were implemented to assist surveyors. Among other VBP-related clarifications, the Proposed Rule also includes:

- a complete list of the measures adopted for the FY 2014 VBP Program;
- a proposed definition of “base operating DRG payment amount,” as well as proposals for calculating the funding amount VBP incentive payments;
- an administrative appeals process that offers hospitals a chance to appeal the calculation of their performance assessment with respect to the performance standards, as well as their total performance score; and
- proposed measures for the FY 2015 VBP Program.

As noted in the preceding article, CMS is accepting comments on the Proposed Rule until June 25, with a final rule to be issued by August 1, 2012. The text of the proposed rule is available [here](#).

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