



An important health care law update from the law firm of Jackson Walker.

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## CMS Issues Final Rule Implementing Hospital Readmissions Reduction Program

By **Kelly Cavazos**

On June 28, 2012, the U.S. Supreme Court issued its ruling in *Department of Health and Human Services v. Florida*, upholding the Affordable Care Act (the "Act") as constitutional. Since then, and even since its passage in March of 2010, various states and federal agencies have been busy preparing to implement the Act.

On August 1, 2012, the Centers for Medicare and Medicaid Services ("CMS"), issued its hospital inpatient prospective payment system ("IPPS") final rule which, among other things, implements key elements of the Act's Hospital Readmissions Reduction Program. Pursuant to the rule, set to become effective on October 1, 2012, CMS will begin reducing payments for discharges to IPPS hospitals with excess readmissions of selected applicable conditions. While CMS intends to expand the number of applicable conditions in further rulemaking, the applicable conditions set forth in the final rule include acute myocardial infarction, heart failure, and pneumonia.

CMS has defined a "readmission" as an admission to an acute care hospital within thirty days of a discharge from the same *or another* acute care hospital. Under the new rule, CMS will calculate an excess readmission ratio for each of the applicable conditions. Such ratios will be measured by the hospital's readmission performance in the previous three years as compared to the national average and adjusted for factors that CMS deems clinically relevant, including patient demographic characteristics, comorbidities, and patient frailty. These ratios will be re-calculated each year using the most recent three years of discharge data and no less than 25 cases. (For FY 2013, excess readmission ratios are based on discharges occurring between July 1, 2008 and June 30, 2011.)<sup>1</sup>

The excess readmission ratios will then be used to determine future payment adjustments for the hospitals. Pursuant to the rule, a hospital's payment adjustment will be the higher of (i) one minus a ratio of its aggregate dollars for excess readmissions to its aggregate dollars for all discharges; or (ii) 0.99 (i.e., a one percent reduction) for FY 2013. That is, hospitals may receive a maximum payment reduction of one percent in FY 2013. This cap will increase to two percent in FY 2014 and three percent in FY 2015 and beyond.

Hospitals should be advised that their readmissions information, including their risk-adjusted readmission rates, will be made available to the public on the Hospital Compare website (<http://www.hospitalcompare.hhs.gov/>). In light of that publication, the rule implements a process by which hospitals will have the 30 days to review and submit corrections to their readmissions information prior to its posting on the website. The 30-day period will begin the day hospitals' Hospital-Specific Reports (HSRs) and accompanying discharge-level information are posted to their

QualityNet accounts.<sup>2</sup> Because it appears that there will be no administrative or judicial review of determinations made under this rule and because readmissions data will be used in reducing payments, it will be very important for hospitals to ensure that their readmissions data is accurate before the expiration of the 30-day review period.

While hospitals have been aware of the readmissions reduction program for over two years, this rule should serve as further encouragement for hospitals to take clinically appropriate action to reduce unnecessary readmissions and prevent further payment cuts due to excessive readmissions. If you have questions about the rule, the Hospital Readmissions Reduction Program in general, or the steps you can take to protect your hospital from further payment cuts, **Jackson Walker's Health Care Law section** is ready to assist. Please contact **Jed Morrison** at [jmorrison@jw.com](mailto:jmorrison@jw.com), **Virginia Alverson** at [valverson@jw.com](mailto:valverson@jw.com), or **Kelly Cavazos** at [kcavazos@jw.com](mailto:kcavazos@jw.com).

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<sup>1</sup>There appears to have been some concern that a portion of the data to be used in determining the excess readmissions ratios pre-dates the enactment of the Affordable Care Act. However, based on the preamble to the final rule, it appears that CMS intends to move forward using such data at this time.

<sup>2</sup>According to QualityNet, this year hospitals should have received their HSRs and discharge-level data with results for review on June 20, 2012. Further, according to a CMS representative, future HSRs will go out each spring or summer, but not prior to the month of April and only after hospitals are notified to expect the HSRs.

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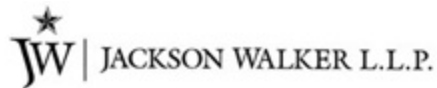
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