

# PUBLICATION

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## PRRB Issues Alert Requiring Supplementation of Record in DSH Cases [Ober|Kaler]

June 02, 2014

Recently, on May 23, the Provider Reimbursement Review Board (PRRB) issued its latest alert, Alert 10 ([Alert](#)), in an email blast. As of the writing of this article, the Alert had not been posted on the PRRB's website. **Filings in reply to the Alert are due July 22, 2014.**

Alert 10 states that based on the PRRB's decision in *Danbury Hospital v. Blue Cross Blue Shield Ass'n*, PRRB Dec. No. 2014-D3 (Feb. 11, 2014) [[PDF](#)], which the Administrator declined to review, providers that are party to a pending appeal that includes Disproportionate Share Payment (DSH) paid/unpaid Medicaid eligible days have an "opportunity to supplement the record based on the *Danbury Hospital* decision."

In *Danbury Hospital*, the Intermediary made no adjustment to the provider's claimed Medicaid eligible days for the FY 2005 cost report. The provider appealed its Medicaid eligible days used for DSH calculation purposes. The PRRB found that it lacked jurisdiction over the appeal under 42 U.S.C. § 1395oo(a), and it declined to exercise its discretionary jurisdiction under § 1395oo(d). The PRRB dismissed the appeal. The decision has been appealed to the United States District Court for the District of Connecticut, Case No. 3:14-cv-00556, where it is currently pending.

In light of the PRRB's decision and despite the fact that it has been appealed, the PRRB is giving providers until July 22, 2014, to supplement the record in any pending cases involving the DSH paid/unpaid days issue. The PRRB has requested the following provider-specific and documentation, if it is not already in the record:

- A detailed description of the process that the provider used to identify and accumulate the actual Medicaid paid and unpaid eligible days that were reported and filed on the Medicare cost report at issue.
- The number of additional Medicaid paid and unpaid eligible days that the provider is requesting to be included in the DSH calculation.
- A detailed explanation why the additional Medicaid paid and unpaid eligible days at issue could not be verified by the state at the time the cost report was filed. If there is more than one explanation/reason, identify how many of these days are associated with each explanation/reason.

After the deadline for submission, the PRRB will begin making jurisdictional decisions on the Medicaid eligible days issue.

### Ober|Kaler's Comments

The scope of the Alert is not clear, i.e., the fiscal years and exact issue that it covers. Questions have been submitted to the PRRB for clarification. It is also unclear if the Alert will survive challenges anticipated to be made against it, both to its substance and its form. In the meantime, providers with appeals pending before the PRRB should read the *Danbury Hospital* decision carefully and determine whether they have the same issue pending in any of their own appeals. If they do, providers should begin to prepare the additional documentation requested by the PRRB and watch for additional clarification and information on this Alert.

