

## Medicare: Hospital Swing Beds Are Not Eligible For Disproportionate Share Adjustment, Court Says.

The US Circuit Court of Appeals for the Fourth Circuit has reversed a lower Federal-court decision which was in favor of a rural North Carolina hospital.

The hospital has fewer than one-hundred total beds and all of its beds are licensed as swing beds that can be used for acute care or skilled nursing care as needed.

The lower court's decision would have granted the hospital \$615,000 in Medicare disproportionate-share reimbursement for patient-care days of patients occupying hospital swing beds over the period 1991-1997.

The Court of Appeals accepted the interpretation of the Medicare reimbursement regulations (42 C.F.R. 412.106) that was advocated by the US Department of Health and Human Services.

The Department argued that disproportionate share reimbursement is not meant to apply to all patient-care days in the acute-care areas of the hospital, but only to patient-care days in the acute-care areas of the hospital devoted to acute-care patients and not to skilled-nursing patients in so-called swing beds.

The Court of Appeals made note that swing beds, as skilled nursing beds, continue to come under the old reasonable cost basis for reimbursement rather than the Medicare prospective payment system, the former reasonable cost basis being generally more financially desirable for hospitals than prospective payment.

Presumably the hospital took that into consideration before going forward with its arguments in favor of its disproportionate-share reimbursement calculations.

The Court expressly said the regulations are ambiguous, which will probably draw attention to this case from the Congress and/or the US Supreme Court. **Dis-trict Memorial Hosp. v. Thompson**, \_\_\_ F. 3d \_\_\_, 2004 WL 765032 (4th Cir., April 12, 2004).

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***A swing bed is a hospital bed physically located in an acute-care area of the hospital which has been licensed to be used either as an acute-care bed or as a skilled-nursing bed, depending on the acuity level of the particular patient occupying the bed.***

***The rationale is that some hospitals lack the resources to create physically separate floors or wings dedicated only to skilled nursing care as opposed to acute care.***

***The disproportionate share adjustment is extra compensation enacted by Congress in 1983 to compensate Medicare-participating hospitals who treat a disproportionate share of low-income Medicare patients who are believed to require more intensive services.***

***However, swing-bed patient days to not count toward reckoning the number of patient days to establish eligibility or to calculate the amount of the disproportionate share adjustment.***

UNITED STATES COURT OF APPEALS  
FOURTH CIRCUIT  
April 12, 2004

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## Defamation, Wrongful Termination: Awards Upheld For Nurses.

The Supreme Court of Arkansas has upheld substantial jury verdicts for two nurses who were wrongfully accused of misconduct and fired based on complaints from aides, as retaliation because the nurses were in the process of reporting the facility to the state office of long term care for multiple uncorrected violations of state regulations. (*Defamation / Wrongful Discharge: Verdict Awarded To Nurses Wrongfully Accused*. Legal Eagle Eye Newsletter for the Nursing Profession, (11) 7, July '03, p.5.)

Employers are strictly forbidden to retaliate against a caregiver who is fulfilling the caregivers strict legal and ethical duty to report abuse or neglect to proper authorities, and the caregiver can sue for compensation. **Northport Health Services, Inc. v. Owens**, \_\_\_ S.W. 3d \_\_\_, 2004 WL 743812 (Ark., April 8, 2004).

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