

# PUBLICATION

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## Protect Wage Index Budget Neutrality Issue by Protested Amount on FYE 12/31/11 Cost Report [Ober|Kaler]

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**The Department of Health and Human Services (HHS) recently agreed to settle a dispute with many hospitals involving the calculation of the Medicare wage index. The settlement involves the calculation of the rural floor budget neutrality component associated with the wage index. The settlement amounts for this issue have the potential to be quite large. Providers that have not yet filed their fiscal year ending (FYE) December 31, 2011 cost report have an opportunity to protect this issue for appeal. There may also be avenues available for other hospitals that have not previously appealed this issue.**

Providers should ensure they have protected this issue, and thus their ability to seek settlement with HHS. There are two ways to protect the issue in appeals filed with the Provider Reimbursement Review Board. The first is to note the issue in an appeal filed within 180 days of the publication of the wage index in the Federal Register. In this case, for the fiscal year ending (FYE) December 31, 2011 cost report, the federal fiscal year (FFY) 2011 wage index that is applicable, was published in the August 16, 2010 Federal Register. Hospitals may have protected their rights to appeal this aspect of the wage index by appealing the issue within 180 days from the August 16, 2010 publication date. If, however, a hospital did not file such an appeal within that timeframe, it has another opportunity to preserve its appeal rights on this issue: it may appeal from its notice of program reimbursement (NPR) which incorporates the FFY 2011 wage index, i.e., it can appeal its FYE December 31, 2011 NPR when it is received. There is, however, a catch: in order to appeal this issue as part of its NPR appeal, the regulations require that the hospital have either claimed the cost as an allowable cost or note it as a protested amount on its as-filed cost report.

### Ober|Kaler's Comments

Providers must file their cost reports for the period ending December 31, 2011 soon. If a hospital has not preserved its right to appeal the wage index budget neutrality issue by including it in an appeal to the PRRB based on the publication of the August 16, 2010 Federal Register, it should be sure to preserve its appeal right by including the additional related reimbursement on the protested line item of its as-filed FYE December 31, 2011 cost report. Once a hospital receives its NPR from the Medicare contractor, it should timely appeal the issue to the PRRB, unless CMS properly corrects the calculation in the finalized cost report.