

# CMS Issues Final Rule on Incorrectly Classified SCHs

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## The Facts

On August 1, 2012, the Centers for Medicare & Medicaid Services (CMS) posted the Inpatient Prospective Payment System (IPPS) final rule for fiscal year 2013. In the rule, CMS finalized a revision to its regulations to address situations where a hospital was incorrectly classified as a Sole Community Hospital (SCH). Under the revised regulation, an SCH is required to report “any factor or information that could have affected its initial classification [as an SCH].” If a hospital makes such a report, and CMS subsequently determines that the hospital should not have been classified as an SCH initially, CMS will revoke SCH status effective 30 days after CMS’s determination. If the hospital fails to report, CMS may recoup overpayments consistent with existing reopening rules (*i.e.* for cost reporting periods that are within the 3-year reopening period).

CMS’s proposed rulemaking drew a number of comments from stakeholders. Although CMS addressed several concerns raised in the comments, CMS did not respond to questions regarding the level of due diligence that a hospital is expected to exercise to discover errors in its initial classification as an SCH status or the extent to which a hospital should be able to rely on CMS’s final determination regarding SCH status. In particular, stakeholders requested that CMS incorporate an express “awareness” requirement into the regulatory language, such that a hospital has a duty to report only if it becomes aware of a factor or information that could have affected its initial classification as an SCH, but CMS declined to do so. CMS instead instructed that a hospital must report if it “suspects that it should not have qualified as an SCH,” without addressing what standard would be used to determine whether a hospital should have had a suspicion about its SCH classification. Stakeholders also requested that CMS expressly clarify that only the regulations and interpretations that were effective at the time of the initial classification are relevant. CMS confirmed this in the preamble, but it did not incorporate this concept into the regulatory language.

## What’s at Stake

The new regulation calls into question whether a hospital can rely on CMS’s determination that the hospital qualifies for SCH status. The regulation also creates a meaningful incentive to report any suspicion regarding SCH status because the financial implications of not reporting are significant – the potential for retrospective revocation for all cost reports subject to reopening.

While this issue is of particular concern to SCHs, all hospitals should take note of CMS's view that a hospital may not always rely on a final determination rendered by the Agency.

## Steps to Consider

SCHs that have reason to suspect that they may not have initially satisfied all of the qualification criteria required for SCH status should consider investigating that suspicion, and making a report to CMS to avoid severe recoupments for failing to report. Because of the significant legal and reimbursement implications associated with these investigations and reports, it is advisable to conduct these activities under the oversight of legal counsel.

In addition to the new regulatory requirement regarding initial classifications, SCHs should continue to be mindful of existing regulations at 42 C.F.R. § 412.92 that require the hospital to monitor certain changes to the circumstances under which it qualified for SCH status, such as the opening of a new hospital in the area or a change to the hospital's geographic classification, and to report such changes to CMS.

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