MACPAC

Treatment of Third-Party Payment in the Definition of Medicaid Shortfall: Potential Recommendations

Medicaid and CHIP Payment and Access Commission

Robert Nelb

Overview

- Background on the disproportionate share hospital (DSH) definition of Medicaid shortfall
- Effects of recent court ruling on Medicaid shortfall for patients with third-party coverage
  - Medicare patients
  - Privately insured patients
- Policy options
- Effects on states, providers, and enrollees
- Next steps

Hospital-Specific DSH Limit

- DSH payments to an individual hospital cannot exceed a hospital's uncompensated care costs for Medicaid and uninsured patients
- Medicaid shortfall is the difference between
  - the cost of providing care to Medicaid-eligible patients, and
  - payments received for those services
- For patients with third-party coverage, hospitals receive payments from both Medicaid and other payers

History of DSH Definition of Medicaid Shortfall

- **1993:** Hospital-specific limit established
- **2003:** States required to audit hospital costs
- **2008:** CMS finalizes DSH audit rule
- **2010:** CMS issues sub-regulatory guidance clarifying that third-party payments should be counted in the shortfall calculation
- **2011:** CMS begins enforcing DSH audit rule
- **2017:** Final rule about third-party payments
- **2018:** Court ruling that third-party payments cannot be counted in the shortfall calculation

Components of Medicaid Shortfall Under Different Accounting Methods

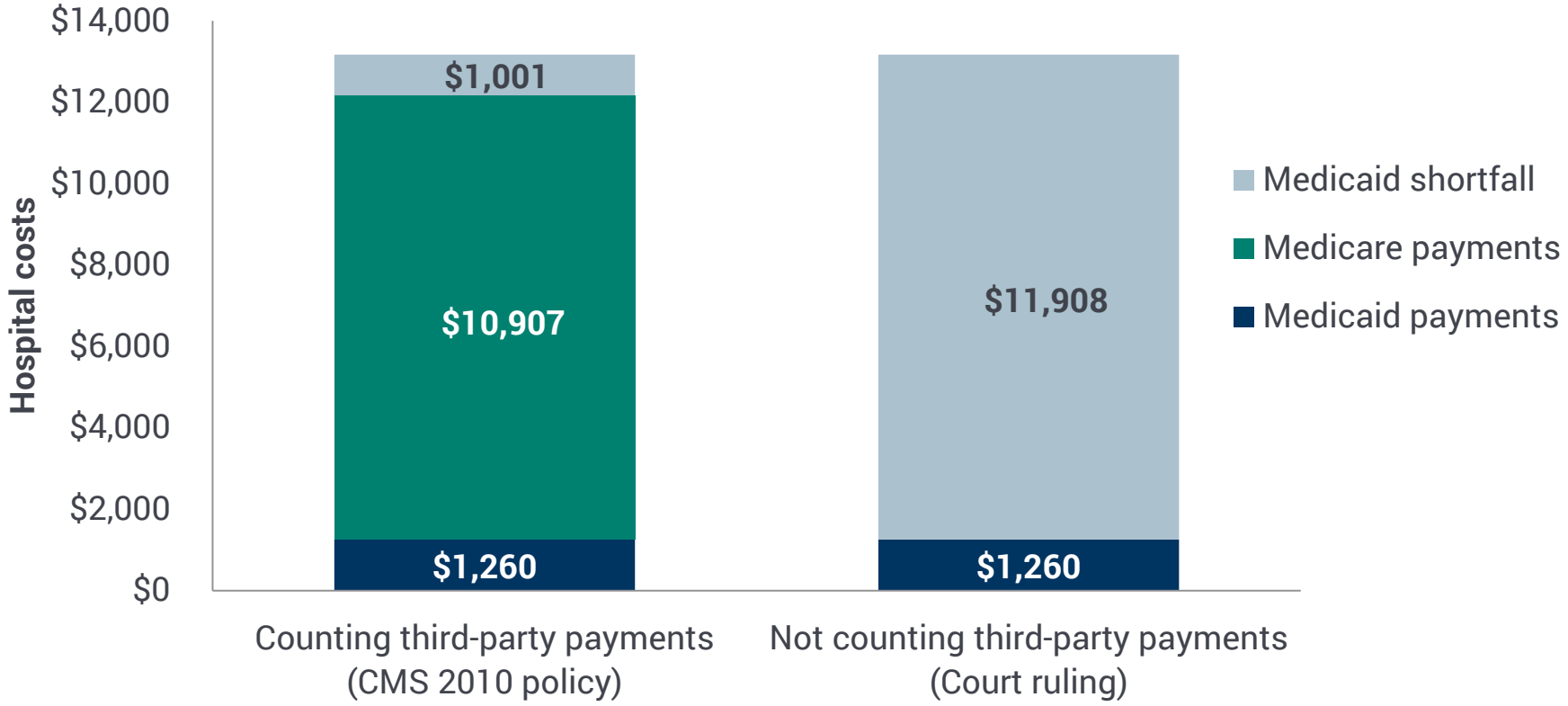
Method of calculating Medicaid shortfall	Medicaid patients with third-party coverage			Medicaid-only patients	
	Medicaid payments	Third-party payments	Costs	Medicaid payments	Costs
Count all payments and costs (CMS 2010 policy)	X	X	X	X	X
Do not count third-party payments, but count third-party costs (Court ruling)	X		X	X	X
Do not count payments or costs for patients with third-party coverage				X	X

Notes: CMS 2010 policy is the policy described in CMS's 2010 sub-regulatory guidance on counting third-party payments in the calculation of Medicaid shortfall. Court ruling is the policy described in Children's Hospital Association of Texas v. Azar, No. 17-844 (D.DC 2018 March 2, 2018), appeal docketed, No. 18-5135 (D.C. Cir. May 9, 2018).

Medicaid Shortfall for Medicare Patients

- Medicare is the primary payer for hospital services
  - Medicare payments are often below hospital costs
  - The court ruling allows hospitals to receive DSH payments for costs paid for by Medicare
- Dually eligible enrollees who do not receive Medicaid assistance with Medicare cost sharing are not reported on DSH audits
- Low Medicaid payment of Medicare cost sharing is counted as uncompensated care

Example of Medicaid Shortfall for Medicare Patients Under Different Accounting Methods



Notes: Court ruling is the policy described in Children's Hospital Association of Texas v. Azar, No. 17-844 (D.DC 2018 March 2, 2018), appeal docketed, No. 18-5135 (D.C. Cir. May 9, 2018). In 2015, the average hospital cost for a Medicare inpatient stay was $13,168 and the Medicare Part A deductible was $1,260.
Source: MACPAC, 2019, analysis of AHRQ Healthcare Cost and Utilization Project data and MedPAC, 2019, *Health care spending and the Medicare program*, Washington, DC: MedPAC, http://medpac.gov/docs/default-source/data-book/jun18_databookentirereport_sec.pdf.

Medicaid Shortfall for Privately Insured Patients

- In 2016, private insurance payments to hospitals were 144.8 percent of hospital costs
  - Surpluses from private insurance payments for Medicaid-eligible patients reduce the DSH payments a hospital can receive for Medicaid-only patients
  - Hospitals with neonatal intensive care units are particularly affected by this policy
- Any cost sharing that a patient does not pay by the time the DSH audit is conducted is reported as uncompensated care costs

Example of Medicaid Shortfall for Medicaid-Eligible Patients with Private Coverage Under Different Accounting Methods (millions)

Method of calculating Medicaid shortfall	Shortfall for Medicaid-eligible patients with private coverage				Shortfall for Medicaid-only patients	Total shortfall
	Medicaid payments	Private insurance payments	Costs	Shortfall (surplus)		
Count all payments and costs (CMS 2010 policy)	$0	$33.7	$20.6	($13.1)	$16.4	$3.3
Do not count third-party payments, but count third-party costs (Court ruling)	0	N/A	20.6	20.6	16.4	37.0
Do not count payments or costs for patients with third-party coverage	N/A	N/A	N/A	N/A	16.4	16.4

Notes: Illustrative example is based on 2013 costs and payment data reported in court filings for the Children's Hospital of the King's Daughter's in Virginia. The hospital noted that it also had $3 million in costs for Medicaid patients with third-party coverage and $22 million in costs for Medicaid-only patients that were not recognized as Medicaid allowable costs.
N/A is not applicable.
Source: MACPAC, 2019, analysis of brief for the Children's Hospital Association as amicus curiae in support of appellees and in support of affirmance, *Children's Hospital Association of Texas v. Azar*, No. 18-5135 (D.C. Cir. 2018).

State and Hospital Effects of Court Ruling

- No change to DSH allotments
- Increases in DSH spending in states with unspent DSH allotments
- Potential redistribution of DSH funding in states that base DSH payments on hospital uncompensated care costs (26 states)

Policy Options

- The Commission could recommend statutory changes to the Medicaid shortfall definition
  - **Option 1:** counting all payments and costs for Medicaid patients with third-party coverage
  - **Option 2:** not counting payments or costs for Medicaid patients with third-party coverage
  - **Option 3:** establishing different rules for different types of third-party coverage situations
- All options minimize the redistribution of DSH spending expected because of court ruling

Implications

- Option 1 results in positive Medicaid shortfall for Medicare patients and negative Medicaid shortfall for privately insured patients
  - Helps offset low Medicaid payments of Medicare cost sharing
  - Eliminates DSH payments for some hospitals
- Option 2 only counts Medicaid shortfall for Medicaid-only patients
  - Administratively simpler
  - Does not discourage hospitals from enrolling privately insured patients into Medicaid
- The effects of option 3 are between those of the other options

Next Steps

- Plan to vote at April meeting
- Recommendations will be accompanied by a draft chapter that describes the Commission's analyses

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