

April 13, 2023

Proposed Rule on Medicaid Disproportionate Share Hospital (DSH) Third-Party Payer Policy

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Medicaid and CHIP Payment and Access Commission



www.macpac.gov

Background

Background on the Proposed Rule

- The Centers for Medicare & Medicaid Services (CMS) released a proposed rule implementing DSH payment changes in the Consolidated Appropriations Act, 2021 (CAA) on February 24, 2023
 - Comments are due April 25, 2023
 - Changes are effective for state plan rate year (SPRY) 2022 DSH payments
- Rule also makes other technical changes to CMS's oversight of DSH policy

Medicaid Shortfall

- DSH payments to hospitals are limited by the sum of two types of uncompensated care
 - Medicaid shortfall: difference of costs of care for Medicaid eligible beneficiaries and payments received for these services
 - Unpaid costs of care for the uninsured
- Recent lawsuits have challenged how Medicaid shortfall is calculated for patients with third-party coverage
- In 2017, 18.4 million Medicaid beneficiaries had third-party coverage
 - 11.5 million individuals dually eligible for Medicare and Medicaid
 - 8.8 million individuals enrolled in Medicaid and private insurance

Different Definitions of Medicaid Shortfall

- From 2010-2022 two different definitions of Medicaid shortfall have been in effect
- CMS 2010 policy
 - Medicaid and all third-party payments (e.g. Medicare and private coverage) and all costs for Medicaid-eligible beneficiaries
- 2018 district court ruling
 - Medicaid payments and costs for Medicaid-eligible beneficiaries
- In 2019, MACPAC recommended to only include Medicaid payments and costs for beneficiaries for whom Medicaid is the primary payer in calculations of Medicaid shortfall

Medicaid Shortfall for Enrollees with and without Third-Party Coverage Under Different Calculation Methods

Method of calculating Medicaid shortfall	Medicaid-eligible patients with third-party coverage			Medicaid-only patients	
	Medicaid payments	Third-party payments	Costs	Medicaid payments	Costs
CMS 2010 policy	X	X	X	X	X
2018 district court ruling	X		X	X	X
MACPAC 2019 recommendation				X	X

Notes: CMS is the Centers for Medicare & Medicaid Services. CMS 2010 policy refers to the policy described in CMS's 2010 subregulatory guidance on DSH payments. 2018 district court ruling refers to the policy described in *Children's Hospital Ass'n of Texas v. Azar*. Components marked with an "X" are included in calculations for that method. CAA includes an exception that allows hospitals with a high volume or share of inpatient days Medicare beneficiaries who are eligible for supplemental security income.

Medicaid Shortfall Under CAA

- CAA implemented a shortfall definition consistent with MACPAC's recommendation
- CAA included an exception for hospitals that serve a large amount of beneficiaries dually eligible for Medicare and Medicaid
 - Top 3 percent of hospitals in terms of number or share of inpatient days for Medicare Part A beneficiaries who are eligible for supplemental security income
 - The DSH limit for excepted hospitals is the higher of the CMS 2010 policy or MACPAC's recommended definition for shortfall
- CAA's changes go into effect for services after October 1, 2021

The background is a solid teal color. On the left side, there are several overlapping, semi-transparent geometric shapes in various shades of teal, including a large circle and several rectangles, creating a layered, abstract effect.

Summary of Proposed Changes and Areas for Potential Comment

Implementing Provisions of CAA

- Proposed rule codifies the CAA change to the DSH definition of Medicaid shortfall
- CMS will use the most recent available cost report data to determine which hospitals will be eligible for the exception
 - States and hospitals will be notified of which hospitals are eligible for the exception before October of each year
 - CMS does not propose any changes to how data on shortfall is collected for excepted hospitals

Recouping DSH Overpayments

- In SPRY 2018, MACPAC estimates that 422 DSH hospitals received a total of \$1 billion in excess of their DSH limit
 - 6.1 percent of DSH payments
- CMS proposes to require auditors to estimate overpayments on DSH audits to facilitate recoupment
- After audits are filed, overpayments are usually redistributed to other hospitals within a state

Changing DSH Reduction Methodology

- The current DSH reduction methodology applies smaller reductions to states that target DSH payments to hospitals with a high volume of Medicaid inpatients or uncompensated care
- States that used DSH funding for coverage expansions in 2009 are exempt from the methodology, but this exception no longer has a practical effect and CMS proposes removing it
- California and Massachusetts still use DSH funding in their Section 1115 demonstrations for supplemental payments
- Because these states do not submit DSH audits, the DSH targeting component of the DSH reduction methodology will use the average for other states

Posting Allotments on Medicaid.gov

- CMS proposes that allotments for the State Children's Health Insurance Program (CHIP) and DSH will be posted on CMS's website instead of the *Federal Register*
- CMS proposes to remove the requirement that CMS post final DSH allotment information by April 1
 - Historically CMS has not been able to meet this deadline
- Proposal will reduce administrative burden for CMS and make information more readily available to states

Potential Areas for Comment

- Data transparency considerations for new Medicaid shortfall definitions
 - Excepted hospitals should report shortfall separately for patients with third-party coverage because they have a different definition for Medicaid shortfall
- Reiterating prior Commission comments
 - States should resubmit DSH audits showing which hospitals received redistributed DSH payments
 - CMS should use provider level data for determining targeting component of DSH allotment reductions for states with Section 1115 demonstrations
 - CMS should post DSH allotments by April 1 to help states prior to the start of their fiscal year

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