DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Hess	1-20-12

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 10-274	[ ] Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR _____ cc: Mr. Keck, Deps	[ ] Prepare reply for appropriate signature DATE DUE _____ [ ] FOIA DATE DUE _____ [X] Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

From: Jan Polatty
To: Deirdra Singleton; John Supra; Melanie Giese; Roy Hess; Sam waldrep
CC: Annmarie McCanne; Brenda James; Janet Bell; Marie Brown; Teeshla Curtis
Date: 01/19/2012 5:44 PM
Subject: Fwd: NAMD memo on DSH NPRM
Attachments: NAMD memo DSH NPRM 120119.doc

Bren, Please Log to Roy - Thank you!

>>> Andrea Maresca <andrea.maresca@namd-us.org> 1/19/2012 10:41 AM >>>
To All Medicaid Directors:

On January 18, 2012, the Centers for Medicare and Medicaid Services published in the Federal Register a notice of proposed rulemaking (NPRM), "Disproportionate Share Hospital Payments - Uninsured Definition" (CMS-2315-P). National hospital associations have worked aggressively to support the changes in the proposed rule and have already been in contact with their members about the NPRM. We anticipate hospitals will contact Directors and other state policymakers regarding these changes, particularly as state budget discussions proceed.

The attached NAMD memo provides Directors with a high level overview of the changes in preparation for any questions they may receive. In addition, NAMD staff identified several issues that Directors may wish to consider in light of the proposed changes and broader state initiatives for payment and delivery system reform.

We hope you find this useful. Please do not hesitate to contact me with any questions.

-Andrea

Andrea Maresca
Director of Federal Policy and Strategy
National Association of Medicaid Directors
444 North Capitol St, #309
Washington, DC 20001
202.403.8623
www.medicaiddirectors.org

NAMD
National Association of
Medicaid Directors

To: Medicaid Directors
From: NAMD staff
Date: January 19, 2012
Re: Changes in the proposed DSH regulation

On January 18, 2012, the Centers for Medicare and Medicaid Services published in the *Federal Register* a notice of proposed rulemaking (NPRM), "Disproportionate Share Hospital Payments – Uninsured Definition" (CMS-2315-P). National hospital associations have worked aggressively to seek the changes in the proposed rule and have already been in contact with their members about the NPRM. We anticipate hospitals, if impacted by this rule, will contact Directors and other state policymakers about these changes, particularly as state budget discussions proceed.

This memo is intended to provide a high level overview of the changes. In addition, NAMD has identified several issues that Directors may wish to consider in light of the proposed changes and broader state initiatives for payment and delivery system reform.

Background

CMS's December 2008 Final Rule "Medicaid Disproportionate Share Hospital Payments," (73 FR 77904) implementing the DSH audit requirements under the Medicare Modernization and Improvement Act of 2003 (MMA) and changed the then prevailing interpretation of the uncompensated costs that could be included in the hospital specific DSH limit. This 2008 rule changed the so-called "service-specific" approach to exclude the costs of all services provided to a patient with any form of "creditable coverage," including an individual who does not have coverage for the particular hospital service or has exhausted their benefits. The DSH audits that have been conducted since the rule's January 19, 2009, effective date have prohibited DSH payments for this source of uncompensated care.

CMS states the proposed changes are intended to mitigate the consequences of the uninsured definition published in the 2008 DSH audit rule. In addition, CMS writes it seeks to provide additional clarity on which costs can be considered uninsured costs for purposes of determining the hospital specific DSH limit.

Comments on the NPRM are due February 17, 2012. The NPRM can be viewed by clicking here: http://www.gpo.gov/fdsys/pkg/FR-2012-01-18/pdf/2012-734.pdf

NAMD
National Association of Medicaid Directors

Summary of proposed changes

CMS states in the NPRM that the 2008 definition excludes costs of medically necessary services and would have a significant negative impact on states, hospitals and other stakeholders. The revisions CMS proposes define whether a person is uninsured on a service-specific basis, so that individuals who have no source of third party coverage for a specific inpatient hospital or outpatient hospital service will be considered uninsured for that service. The costs of that service may be included in the Medicaid hospital specific DSH calculation. For Medicaid eligible individuals, all costs incurred in providing inpatient and outpatient hospital services and covered under the state plan should be included in the Medicaid hospital costs when calculating the Medicaid hospital specific DSH limit.

Specifically, CMS proposes that states may include the costs of the following services:

- Services not included in an individual's health benefits coverage through a group health plan or health insurer, and for which there is no other legally liable third party;
- Services beyond a lifetime or annual coverage limit; and,
- Services provided to individuals with IHS and tribal coverage if the services are not received directly from IHS or tribal health programs or through the contract health service program.

Costs not included and additional issues

CMS expressly states that the following policies remain unchanged or are not otherwise addressed in this NPRM:

- CMS writes that states retain flexibility to set DSH state plan payment methodologies consistent with statute and regulations. The NPRM does not modify the DSH allotment amounts and will not impact the state's ability to claim FFP for DSH payments made up to the published DSH allotment amounts. However, CMS writes that the NPRM may affect the calculation of the hospital specific DSH limit depending upon the method utilized by the hospital or state in calculating the limit prior to the effective date.
- The rule does *not* change the current policy stipulating that costs associated with "bad debt," including unpaid copayments and deductibles, are excluded from the DSH limit.

- Payer discounts cannot be included in calculating the hospital specific DSH limit for individuals with third party coverage.

- CMS expressly states it is not providing a single test for how a "service" is defined. However the agency writes that hospitals should determine that an individual is insured or not insured for any given hospital stay, and not separate out component parts of the hospital stay based on the level of payment received.

- CMS also reiterates its policy that costs of services for which payment has been administratively denied may not be included in the DSH limit, and the costs of care to prisoners may only be included if the individual has been "released from secure custody," consistent with existing Medicaid policy.

Implementation of new definitions

CMS states that the proposed rule's definition of ``individuals who have no health insurance (or other source of third party coverage) for the services furnished during the year" for the purposes of calculating the hospital-specific DSH limit is effective for 2011. This means the clarifications would be effective for DSH audits and reports submitted following 2011.

Operational and policy considerations for Medicaid agencies

The following are some issues Directors may wish to consider as they review the rule and its impact on your existing program and future plans.

- What, if any, policy and operational changes would the proposed rule necessitate to comply with federal and/or state reporting and auditing requirements? (e.g. guidance to hospitals, state plan payment methodologies, terms of any auditing requirements, etc.)

- National hospital associations already have been in contact with their members about the changes in the proposed rule. As such, Directors may receive inquiries from their hospitals regarding the proposed changes. In addition, some Directors may encounter questions about this issue during budget proceedings. Is the state prepared to answer questions about possible changes in state DSH limits?

- What, if any, impact does this proposed change have on future Medicaid expenditures? What impact might this have on the state plan payment methodology as the federal DSH allotment decreased beginning in federal fiscal year 2014?

- Does the state need or want to revise its state payment plan methodology for calculating DSH limits?

- What, if any, impact does the proposed rule have for existing waivers or those under development that implicate the state's uncompensated care pool funding?