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Subject: Medicaid State Disproportionate Share Hospital Allotment Reductions Final Rule

HHS Intergovernmental and External Affairs Notification

September 13, 2013

From: Paul Dioguardi
Director, Office of Intergovernmental and External Affairs
U.S. Department of Health and Human Services

RE: Medicaid State Disproportionate Share Hospital Allotment Reductions Final Rule

The Affordable Care Act requires aggregate reductions to state Medicaid disproportionate share hospital (DSH) allotments annually from fiscal year (FY) 2014 through FY 2020, at the same time as the Marketplace and Medicaid provide increased coverage options that will reduce uncompensated care levels for hospitals. State Medicaid programs make DSH payments to qualifying hospitals that serve a large number of low-income individuals. On May 13, 2013, the Centers for Medicare & Medicaid Services (CMS) issued a proposed rule with request for comment to implement the provision of the Affordable Care Act that reduces Medicaid Disproportionate Share Hospital (DSH) allotments.

CMS received a number of public comments, mostly from states, hospital associations, and individual hospitals. The DSH reduction methodology adopted in the final rule is similar to the proposed rule. Based on public comments, the final rule includes technical updates, corrections, and clarifications..

This final rule will go into effect for FY 2014 and FY 2015 DSH allotments.

Overview
The Affordable Care Act authorizes states to expand Medicaid to adults under age 65 with income of up to 133 percent of the federal poverty level (approximately $15,280 for a single adult in 2013) and provides unprecedented federal funding for these states. The Federal government will pay for 100% of the cost of coverage for newly eligible individuals through 2016, and pay no less than 90% of the cost subsequently. Expanded coverage thanks to the Affordable Care Act through the Medicaid program and through Health Insurance Marketplaces is expected to significantly reduce uncompensated care born by hospitals and other providers.

At the same time as the Affordable Care Act expands coverage that reduces levels of uncompensated care, it also reforms Medicaid DSH allotments to reflect anticipated changes in coverage. Currently, states make Medicaid DSH payments to hospitals that serve a disproportionate share of low income patients and have high levels of uncompensated care costs. States have broad discretion to distribute Medicaid DSH payments to hospitals, subject to hospital-specific payment limits and state-wide DSH allotments. DSH allotments vary among states. The Affordable Care Act directs that there be better targeting of this funding towards uncompensated care.

Provisions of the Final Rule

The Affordable Care Act includes the annual amount of aggregate DSH reductions and directs the Secretary to develop a methodology, with consideration of statutory factors (mentioned below), for carrying out the

reductions. This final rule implements these changes. The law specifies the following annual reductions to state-wide DSH allotments for all states for FY 2014 and 2015:

Fiscal Year	Reduction (Federal Share)
2014	$500 million
2015	mbowman@alec.org $600 million

The Affordable Care Act also outlines the following factors that must be taken into account when developing the methodology:

(1) Low DSH states receive smaller reductions.
(2) States with lowest percentages of uninsured individuals receive larger reductions.
(3) States that do not target their DSH payments to hospitals with high volumes of Medicaid beneficiaries receive larger reductions.
(4) States that do not target their DSH payments on hospitals with high levels of uncompensated care receive larger reductions.
(5) States that have increased coverage under section 1115 demonstrations as of July 31, 2009, and adjusted their DSH allotments will have these adjustments taken into account.

The final rule includes a reduction methodology only for FY 2014 and FY 2015. A two-year methodology accommodates data refinement and methodology improvement before larger reductions begin in FY 2017. CMS will revisit the methodology and promulgate new rules to govern DSH reductions in FYs 2016 and beyond. The rule establishes separate DSH reduction pools for low-DSH states and non-low DSH states. The rule then creates a formula for distributing the reductions in each pool that gives one-third weight to the uninsured percentage factor. Another one-third is given to each of the two DSH payment targeting factors. The rule also contains a procedure for protecting allotments that support section 1115 demonstration coverage increases. The methodology encourages states to target Medicaid DSH payments to high Medicaid volume hospitals and hospitals with high levels of uncompensated care. For the years covered by this rule (FY 2014 and 2015), State decisions to expand Medicaid will not affect the amount of reduction in DSH allotments. We intend to revisit the methodology for DSH allotment reduction in future rulemaking.

This rule establishes an annual reduction methodology for the first two years, effective for FY 2014 and FY 2015 DSH allotments.

The rule can be found at http://www.ofr.gov/inspection.aspx