

Issue Brief

FEDERAL ISSUE BRIEF



Analysis provided for MHA by Larry Goldberg, Goldberg Consulting

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CMS Proposes Clarification of Counting Days Associated with Section 1115 Demonstrations in the DSH Fraction

The Centers for Medicare and Medicaid Services (CMS) have issued a proposed rule clarifying the regulations on the counting of days associated with individuals eligible for certain benefits provided by section 1115 demonstrations in the Medicaid fraction of a hospital's disproportionate patient percentage.

The proposal is scheduled for publication on February 28, and provides for a 60-day comment period. A copy of the display version is currently available at: <https://public-inspection.federalregister.gov/2023-03770.pdf>. Of course, this link will expire upon publication in the **Federal Register**.

A hospital's disproportionate patient percentage (DPP) is the sum of two fractions: the "Medicare fraction" and the "Medicaid fraction." CMS notes that the Medicaid fraction is computed by dividing the hospital's number of inpatient days furnished to patients who, for such days, were eligible for Medicaid but were not entitled to benefits under Medicare Part A, by the hospital's total number of inpatient days in the same period.

CMS notes that Section 5002 of the **Deficit Reduction Act** of 2005 (DRA) amended section 1886(d)(5)(F)(vi) of the Act to clarify the Secretary's discretion to regard as eligible days for Medicaid. CMS says that "Congress expressly ratified in section 5002(b) of the DRA our prior and then-current policies on counting demonstration days in the Medicaid fraction."

CMS is proposing to revise its regulations at § 412.106(b)(4) to explicitly reflect its interpretation of the language regarded as eligible for medical assistance under a State plan approved under title XIX "because they receive benefits under a demonstration project approved under title XI" in section 1886(d)(5)(F)(vi) of the Act to mean patients provided health insurance benefits by a section 1115 demonstration. Specifically, CMS is proposing to regard as Medicaid eligible for purposes of the Medicare DSH payment adjustment patients (1) who receive health insurance through a section 1115 demonstration itself or (2) who purchase health insurance with the use of premium assistance provided by a section 1115 demonstration, where State expenditures to provide the insurance or premium assistance is matchable with funds from title XIX.

CMS estimates 310 hospitals in seven States (Arkansas, Massachusetts, Oklahoma, Rhode Island, Tennessee, Utah, and Vermont) currently operate approved premium assistance section 1115 demonstrations.

For States that have section 1115 demonstrations that include uncompensated/undercompensated care pools, the patients whose care is subsidized by these section 1115 demonstration funding pools would not be regarded as "eligible for medical assistance under a State plan approved under title XIX in section 1886(d)(5)(F)(vi) of the Act because the demonstration does not provide them with health insurance benefits. Even if they could be regarded as Medicaid eligible, the Secretary is proposing to use his authority to exclude the days of those patients from being counted in the DPP Medicaid fraction."

CMS notes that hospitals in the following six States would no longer be eligible to report days of patients for which they received payments from uncompensated/undercompensated care pools authorized by the States' section 1115 demonstration for use in the DPP Medicaid fraction numerator: Florida, Kansas, Massachusetts, New Mexico, Tennessee, and Texas.

Comment

This is a relatively short rule. Nonetheless, it is quite detailed regarding CMS' rationale on the counting of Medicaid DSH days. The proposal does not indicate an effective. No doubt, CMS will receive numerous comments on the proposal.

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