

## MEDICARE DSH PAYMENT REGULATIONS

The Centers for Medicare & Medicaid Services is proposing to revise its regulations governing Medicare disproportionate share hospital payments. The Missouri Hospital Association urges support for CMS' changes. The current formula for distributing Medicare DSH funds relies on a flawed proxy for uncompensated care. This diverts funds away from Missouri hospitals that treat the uninsured.

Section 3133 of the Affordable Care Act reduced Medicare DSH payments to compensate for expected reductions in uninsured costs through expanded coverage. To implement the law, CMS wrote regulations governing Medicare DSH payments beginning in 2014. They hold one-quarter of the Medicare DSH funds constant, but reduce the remaining 75 percent by CMS' national projections of reductions in the uninsured. The funds are then distributed to eligible hospitals based on inpatient care delivered to patients eligible for Medicaid or Medicare supplemental security income benefits.

The current formula distributes the payments contrary to their intended purpose. It also benefits hospitals in states that expanded Medicaid eligibility at the expense of hospitals in states that didn't expand.

- In non-expansion states, those who would have been covered by Medicaid continue to arrive uninsured at the hospital doors. Hospitals in those states bear a greater uncompensated care burden — the problem DSH payments are designed to offset — yet they incur a reduction in the DSH pool based on the national decline in the uninsured rate. That decline largely reflects the experience of the expansion states.
- Hospitals in non-expansion states are penalized a second time when their Medicaid inpatient utilization rates used to distribute the Medicare DSH funds remain relatively flat compared to the increasing rates of hospitals in expansion states.

The flaws of the current regulation have been highlighted by the Medicare Payment Advisory Commission, CMS contractors and CMS itself. A December 2016 article in *Health Affairs* (Stensland, et al.) commented that “the current uncompensated care payments are not directly tied to the true uncompensated care” and “in fact, when a hospital admits a charity care case for one day, overall Medicare payments go down by a small amount because of reductions in Medicare DSH payments ...” The authors estimated that for every uncompensated care patient a hospital treats, Medicare payments on average will be reduced by \$20.

Recognizing these flaws, CMS is proposing in its FY 2018 Medicare Inpatient Prospective Payment System regulation to use Worksheet S-10 in place of Medicaid and Medicare SSI days to distribute DSH funds. This is a relatively new part of the Medicare cost report designed to be a standardized metric of uncompensated care in hospitals. CMS is calling for a three-year transition of Worksheet S-10 into the formula. This is timely. If adopted this year, Worksheet S-10 would apply to cost report data from 2014, the first year of the ACA's Medicaid expansion. The current standard would apply to pre-expansion data.

The Missouri Hospital Association and many others expressed support for a similar CMS proposal last year. However, the transition to Worksheet S-10 was significantly delayed in CMS' final IPPS rule. Rather than beginning implementation in FY 2018, the transition was delayed to “no later than FY 2021.” Some organizations had argued that further “refinement” of Worksheet S-10 was needed. They continue to do so. The Missouri Hospital Association continues to assert that “while attaining high levels of accuracy and uniformity of data reported under worksheet S-10 is a laudable goal, it is important to note that the present methodology is itself significantly inaccurate as a measure of uncompensated care. Delaying the transition pending ideal S-10 data perpetuates the current inaccuracies and inequities.”

Financial projections indicate that adopting CMS' proposed regulatory changes to the Medicare DSH formula would increase payments to Missouri hospitals by \$34 million in FY 2018.

