

## **PUBLIC NOTICE**

November 26, 2018

The Cabinet for Health and Family Services, Department for Medicaid Services (DMS), in accordance with 42 CFR 447.205, hereby provides public notice of changes to the Disproportionate Share Hospital Distribution (DSH) language in its State Plan effective November 30, 2018.

The State Plan language will be changed to align with KRS 205.639 to 205.640 to reflect the methodology for DSH payment distributions to an eligible hospital. The detailed payment methodology can be viewed within KRS 205.639 and 205.640, located at <http://www.lrc.ky.gov/Statutes/index.aspx>. Below is a summary of changes:

- (1) If there are remaining funds within the psychiatric pool after all private psychiatric hospitals reach their hospital-specific DSH limit, state mental hospitals may exceed the ninety-two and three-tenths percent (92.3%) limit but may not exceed their hospital-specific DSH limit;
- (2) An individual hospital shall not receive an initial DSH payment unless the hospital submits a Medicaid DSH survey by the established deadlines. Failure to submit a DSH survey in a timely manner or other required information for receipt of an initial DSH payment shall result in an individual hospital's final DSH payment being reduced by twenty percent (20%).
- (3) For state fiscal year 2018-2019, the department shall use the examined state fiscal year 2014-2015 DSH survey to calculate an initial DSH payment. Providers who did not receive a DSH payment for state fiscal year 2014-2015 shall be eligible to submit data for the purpose of the 2019 payment, subject to limited review. For state fiscal year 2019-2020, and each year thereafter, the department shall use the Medicaid DSH survey covering the hospital's fiscal year ending in the calendar year preceding July 1 of the applicable state fiscal year to calculate an initial DSH payment.
- (4) Using the surveys submitted payments shall be made as follows:
  1. Each university hospital in the university pool shall receive an initial DSH payment equal to one hundred percent (100%) of the hospital's total uncompensated care costs if the total initial DSH payments to all hospitals in the university pool do not exceed the maximum allotment to the university pool. If the total uncompensated care costs for the pool exceed the pool's maximum allotment, the initial uncompensated care factor for university hospitals shall be determined by calculating the percentage of each hospital's total uncompensated care costs toward the sum of the total uncompensated care costs of all hospitals in the university pool, and each hospital's initial DSH payment shall be calculated by multiplying the hospital's initial uncompensated care factor by the

total funds allocated to the university hospital pool;

2. For each private psychiatric and state mental hospital in the psychiatric pool, the department shall calculate an initial uncompensated care factor. The initial uncompensated care factor for a private psychiatric or state mental hospital shall be determined by calculating the percentage of each hospital's total uncompensated care costs toward the sum of the total uncompensated care costs for all private psychiatric or state mental hospitals in the psychiatric pool, as appropriate. Each hospital's initial DSH payment shall be calculated by multiplying the hospital's initial uncompensated care factor by the total funds allocated to private psychiatric or state mental hospitals in the psychiatric pool, as appropriate. No individual hospital's initial DSH payment shall exceed the hospital's hospital-specific DSH limit;
  3. For each hospital in the acute care pool, the department shall make an initial determination of whether the acute care hospital qualifies as an essential hospital and calculate an initial uncompensated care factor for each hospital. The initial uncompensated care factor for each hospital in the acute care pool shall be determined by calculating the percentage of each hospital's total uncompensated care costs toward the sum of the total uncompensated care costs for all hospitals in the acute care pool except that the initial uncompensated care factor for an essential hospital shall be calculated using two hundred percent (200%) of the hospital's total uncompensated care costs. Each hospital's initial DSH payment shall be calculated by multiplying the hospital's initial uncompensated care factor by the total funds allocated to the acute care pool. No individual hospital's initial DSH payment shall exceed the hospital's hospital-specific DSH limit;
- (5) Essential hospital means an acute care hospital that qualifies as a Medicaid inpatient utilization rate (MIUR) hospital, a low-income utilization rate (LIUR) hospital, or a critical access hospital.
  - (6) Low-income utilization rate hospital or "LIUR hospital" means an acute care hospital whose low-income utilization rate exceeds one hundred twenty percent (120%) of the state average low-income utilization rate rounded to the nearest hundredth for all acute care hospitals, critical access hospitals, private psychiatric hospitals, and university hospitals combined, as reported on the hospitals' Medicaid DSH surveys.
  - (7) Medicaid inpatient utilization rate hospital or "MIUR hospital" means an acute care hospital whose MIUR using Medicaid primary payor claims only equals or exceeds one (1) standard deviation above the mean MIUR rounded to the nearest hundredth for all acute care hospitals, critical access hospitals, private psychiatric hospitals, and university hospitals combined, as determined from

the hospitals' Medicaid DSH surveys.

- (8) For any hospital that is newly enrolled in the Medicaid program and lacks at least six (6) months of cost report information, the department shall calculate a proxy amount for the hospital's uncompensated care costs.
- (9) The department shall calculate an initial DSH payment and shall notify each hospital of their calculation.
- (10) Hospitals shall notify the department by of any adjustments in the department's initial calculations;
- (11) An initial DSH payment shall not be subject to appeal;
- (12) Each hospital's total initial DSH payment shall be reconciled to a final DSH payment using the examined Medicaid DSH surveys and shall correspond to the applicable state fiscal year DSH payment year.
- (13) Using the surveys submitted the department shall make a final determination of whether an acute care hospital qualifies as a MIUR or as a LIUR hospital. Any qualifying hospital will be deemed an essential hospital. Critical access hospital status will also be confirmed to make a final determination of essential hospital status.
- (14) The department shall calculate a final DSH payment utilizing final examined surveys based on the method of distribution amongst providers and pools as noted for initial payments.
- (15) If an overpayment is identified, repayment shall be made by the hospital following resolution of all appeals.
- (16) Hospitals shall notify the department by of any corrections to the department's calculations.
- (17) If a hospital's initial DSH payment was less than the hospital's final DSH payment, the department shall pay the hospital the amount of the difference following resolution of all appeals.
- (18) Disproportionate share payments remaining after reconciling each hospital's initial DSH payment with the hospital's final DSH payment shall be distributed to other hospitals in the acute care pool, university pool, or to private psychiatric hospitals in the psychiatric pool as noted within the statute.
- (19) An in-state hospital participating in the Medicaid Program shall submit a Medicaid DSH survey corresponding to the hospital's cost reporting period to the department no later than sixty (60) days following the hospital's submission of their annual cost report, unless an extension has been granted by the commissioner.
- (20) Definitions of common terms are updated and can be found within KRS 205.639.

## **Necessity**

DMS is making this change to the State Plan to align with Kentucky statutes.

**Fiscal Impact:** DMS has determined there is no aggregate fiscal impact as the amount distributed to all hospitals in aggregate remains the same. Individual hospital amounts may vary based on data submitted.

Copies of this notice are available at each county's Department for Community Based Services (DCBS) office and at <https://chfs.ky.gov/agencies/dms/Pages/default.aspx> for public review. For the address of the local office, please see [https://prdweb.chfs.ky.gov/Office\\_Phone/index.aspx](https://prdweb.chfs.ky.gov/Office_Phone/index.aspx). Additional information regarding these proposed actions is available upon request at the address cited below.

## Public Comment

A copy of this notice is available for public review at the Department for Medicaid Services at the address listed below. Comments or inquiries may be submitted in writing within thirty (30) days to:

Commissioner's Office  
Department for Medicaid Services, 6W-A  
275 E. Main Street  
Frankfort, Kentucky 40621