

**Center for Medicaid and State Operations**

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SMDL #02-013

August 16, 2002

Dear State Medicaid Director:

I am writing to you to clarify policy regarding the Medicaid disproportionate share hospital (DSH) program. Section 1902(a)(13) of the Social Security Act (the Act) provides that Medicaid inpatient hospital payment rates take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs. Section 1923 of the Act requires that state DSH programs recognize those hospitals that serve a disproportionate number of Medicaid and low-income patients by providing additional Medicaid payments to those hospitals that qualify. This letter clarifies questions states and providers have regarding the Medicaid DSH program, supplemental upper payment limit (UPL) payments, and payment for prisoner inmate care.

**Medicaid Supplemental UPL Payments and the Calculation of the OBRA 93 Uncompensated Care Cost Limits**

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) added section 1923(g) of the Act to require that states pay no more in DSH payments than 100 percent of each hospital's uncompensated care costs. The Benefits Improvement and Protection Act (BIPA) of 2000 increased the DSH limit to 175 percent of a hospital's uncompensated care for a period of two years for state fiscal years beginning after September 30, 2002, for all qualifying public hospitals.

When a state calculates the uninsured costs and the Medicaid shortfall for the OBRA 93 uncompensated care cost limits, it must reflect a hospital's costs of providing services to Medicaid patients and the uninsured, net of Medicaid payments (except DSH) made under the state plan and net of third party payments. States should be aware that Medicaid payments include any supplemental or enhanced upper payment limit payments paid to hospitals under the state plan. Not recognizing these Medicaid payments would overstate a hospital's amount of uninsured costs and Medicaid shortfall, thus inflating the OBRA 93 uncompensated care cost limits for that particular hospital.

**Prisoner Inmate Care and the Calculation of the OBRA 93 Uncompensated Care Cost Limits**

Section 1923(g) of the Social Security Act establishes a hospital-specific DSH limit. It limits Medicaid payments to the costs incurred during the year of furnishing hospital services by the hospital to individuals who are either eligible for medical assistance under the State plan or have no health insurance or source of third party coverage for services provided during the year. Inmates of correctional facilities are wards of the State. As such, the State is obligated to cover their basic economic needs (food, housing, and medical care) because failure to do so would be in violation of the eighth amendment of the Constitution. Therefore, because these individuals

have a source of third party coverage, they are not uninsured, and the State cannot make DSH payments to cover the costs of their care.

Further, this conclusion is consistent with Section 1905(a) of the Social Security Act and the regulations at 42 CFR 435.1008 and 435.1009, which prohibit (FFP) for services, provided to inmates of public institutions. To read section 1923(g) of the Social Security Act to permit additional DSH payments for the costs of prisoner care would directly conflict with this statutory prohibition, and effectively render the statutory prohibition meaningless.

### **Calculation of the Medicaid Inpatient and Low-Income Utilization Formula**

Section 1923(b) of the Act spells out two formulas states must use to determine which hospitals, at a minimum, receive payments under the DSH program. The first formula, the Medicaid inpatient utilization rate formula, accounts for inpatient hospital days attributable to patients who for such days were eligible for medical assistance under a state plan approved under title XIX of the Act. The second formula, the low-income utilization rate formula, accounts for inpatient payments paid for patient services under a Medicaid state plan and charges for charity care.

Section 701(b) of BIPA amended the low-income utilization rate formula and the Medicaid inpatient utilization rate formula. Effective with DSH payments made on or after January 1, 2001, states must count Medicaid days of patients enrolled in managed care in the calculation of the Medicaid inpatient utilization rate, and count Medicaid payments paid by a managed care entity on behalf of the state in the calculation of the low-income utilization rate. Please ensure that all DSH eligibility determinations made after January 1, 2001 comply with this requirement.

If you have any questions regarding the clarification provided, please contact the National Institutional Reimbursement Team (NIRT) at (410) 786-3284 or submit your questions to the NIRT directly via e-mail (NIRT@cms.hhs.gov).

Sincerely,

/s/

Dennis G. Smith  
Director

cc:

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