

HEALTH REFORM IMPACT

What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

The Dish on DSH: Reductions to Medicare and Medicaid Disproportionate Share ("DSH") Payments

May 10, 2010

Both the Medicare and Medicaid programs provide hospitals with supplemental payments for the treatment of a disproportionate share of low-income patients. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act (the "Health Reform Legislation"), will substantially reduce the DSH payments historically received by qualifying hospitals for uncompensated care. The Congressional Budget Office estimates the savings stemming from the reductions in Medicare and Medicaid DSH payments will amount to \$36 billion by 2019 (\$22.1 billion for Medicare and \$14 billion for Medicaid).¹

Medicare DSH Payments

Under the Health Reform Legislation, starting in fiscal year 2014 and for each subsequent fiscal year, the DSH payments that hospitals receive will be reduced based on a formula. Each DSH hospital will still receive 25% of its previous DSH payment calculation plus an additional payment based on a complex formula. The additional DSH payment will be calculated based on the product of: (i) the remaining 75% that the DSH hospital would have otherwise received in the absence of the Health Reform Legislation; (ii) the percentage decrease in the number of uninsured; and, (iii) the amount of uncompensated care that the DSH hospital provides as compared to all DSH hospitals.

The Health Reform Legislation does not mandate the use of any particular data source in determining the applicable reduction in the number of uninsured. In addition, it does not define "uncompensated care," leaving some open questions regarding the true effects of these DSH payment reductions.

¹ Letter from Douglas W. Elmendorf, Director of the Congressional Budget Office to Nancy Pelosi, Secretary of the Department of Health and Human Services, Table 2, Table 5 (March 20, 2010).

Medicaid DSH Allotment Reduction

Similarly under the Health Reform Legislation, State Medicaid DSH will be reduced quarterly starting in 2014. The aggregate reductions mandated by the legislation are as follows: \$500 million for fiscal year 2014, \$600 million for each of fiscal year 2015 and 2016, \$1.8 billion for fiscal year 2017, \$5 billion for fiscal year 2018, \$5.6 billion for fiscal year 2019, and \$4 billion fiscal year 2020. The Health Reform Legislation gives the Secretary of Health and Human Services (the "Secretary") discretion in choosing the methodology to implement these reductions with some limitations. For example, the Health Reform Legislation mandates that low DSH States, as defined in 42 U.S.C. § 1396r-4(f)(5)(B), receive a smaller percentage reduction.

As with many of the provisions of the Health Reform Legislation, we will have to wait to see what methodology the Secretary chooses before being able to predict how the reductions will impact specific hospitals or regions. Nonetheless, we can predict that hospitals in regions that experience the highest reductions in the number of uninsured will likely see the largest Medicaid DSH payment reductions.

If you have any questions regarding this issue of Health Reform IMPACT, please contact any of the attorneys in our Healthcare Practice Group shown below.

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