

205.640 Medical Assistance Revolving Trust Fund (MART) -- Distribution of disproportionate share funds -- Authority for administrative regulations -- Duties of hospitals receiving funds from MART.

- (1) The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.
- (2) The Medical Assistance Revolving Trust Fund (MART) shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.363 shall be deposited in the State Treasury and transferred on a quarterly basis to the Department for Medicaid Services for use as specified in this section. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.363 may be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (3) (a) Beginning in state fiscal year 2000-2001 and continuing annually thereafter, provider tax revenues and state and federal matching funds shall be used to fund the disproportionate share program established by administrative regulations promulgated by the Cabinet for Health and Family Services. Disproportionate share funds shall be divided into three (3) pools for distribution as follows:
 1. An acute care pool, composed of critical access hospitals, comprehensive physical rehabilitation hospitals, long-term acute hospitals, and acute care hospitals that do not qualify as a university hospital, shall receive an initial and a final allocation determined by subtracting from the state's total DSH allotment:
 - a. The allocation required in subparagraph 2. of this paragraph for the psychiatric pool; and
 - b. The initial or final, as applicable, DSH payments to be made to hospitals in the university pool in subparagraph 3. of this paragraph;
 2. A psychiatric pool, composed of private psychiatric hospitals and state mental hospitals, shall receive the percentage allowable by federal law pursuant to 42 U.S.C. sec. 1396r-4(h), up to nineteen and eight-hundredths percent (19.08%) of the total disproportionate share funds, with the allocation between each respective group of hospitals established by the biennial budget; except, however, that the allocation to state mental hospitals shall not exceed ninety-two and three-tenths percent (92.3%) of the total allotment to the psychiatric pool. 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;

3. A university hospital pool, composed of university hospitals, shall receive thirty-seven percent (37%) of the state's DSH allotment; except, however, that initial and final DSH payments to university hospitals shall be determined according to paragraph (e) of this subsection and not exceed the pool's overall allotment;
 4. If there are any remaining disproportionate share funds from the psychiatric pool, fifty-four percent (54%) of those funds shall be distributed to the acute care pool and forty-six percent (46%) shall be distributed to the university pool. If the university hospitals are unable to absorb additional DSH payment dollars, remaining funds shall be distributed to the acute care pool; and
 5. If, in any year, university hospitals fail to provide state matching funds necessary to secure federal financial participation for the funds allocated to university hospitals under this subsection, the portion of the funding allocation that is not matched by university hospitals shall be made available to the acute care pool.
- (b) The MART fund shall be used to compensate acute care hospitals, private psychiatric hospitals, state mental hospitals, critical access hospitals, comprehensive physical rehabilitation hospitals, long-term acute care hospitals, and university hospitals participating in the disproportionate share program for uncompensated care costs.
- (c) An individual hospital shall receive distributions if the hospital meets the requirements of the disproportionate share program pursuant to 42 U.S.C. sec. 1396r-4.
- (d) 1. An individual hospital shall not receive an initial DSH payment unless the hospital submits a Medicaid DSH survey by the deadline established by subsection (8)(a) of this section, unless the deadline has been extended by the commissioner of the department. Extension requests shall be received at least ten (10) days prior to the deadline. Extensions shall be limited to rare circumstances which prevent the hospital from meeting the deadline despite due diligence. Extensions shall be granted for no more than thirty (30) calendar days from the original due date for the Medicaid DSH survey. 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%).
2. A hospital newly enrolled in the Medicaid program, which does not have at least six (6) months of cost report information necessary to calculate an initial DSH payment, may submit a limited DSH survey for the purpose of determining if the hospital is eligible to receive an initial DSH payment.
- (e) Distributions shall be made as follows:

1. 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. Using the surveys submitted in accordance with this subsection, payments shall be made as follows:
 - a. 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 as set forth in subsection (3)(a) of this section. 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;
 - b. 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;
 - c. 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;

- d. 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. A newly enrolled hospital's uncompensated care costs proxy amount shall be determined by first dividing the total uncompensated care costs for all non-newly enrolled hospitals in the appropriate pool by the total number of hospital beds, excluding swing beds, reported on the Medicaid cost reports by those hospitals and then multiplying the resulting uncompensated care cost per bed by the new hospital's total number of hospital beds, excluding swing beds. Any uncompensated care costs proxy amounts calculated for newly enrolled hospitals shall be used in the determination of initial uncompensated care factors for all other hospitals in the appropriate pool;
- e. The department may make adjustments to a Medicaid DSH survey filed by a hospital to correct information that is incomplete or inaccurate as determined by limited review. If the department makes adjustments to a hospital's Medicaid DSH survey, the department shall provide written notice to the hospital;
- f. If a hospital has a negative uncompensated care cost, its uncompensated care costs shall be excluded from the calculation of any uncompensated care costs proxy amount for newly enrolled hospitals and uncompensated care factors for the appropriate pool;
- g. By September 30 of each year, the department shall calculate an initial DSH payment pursuant to subparagraph 1. of this paragraph and shall notify each hospital of their calculation. The notice shall, at minimum, contain the following for each hospital:
 - i. Uninsured uncompensated care costs;
 - ii. Total uncompensated care costs;
 - iii. The status of the MIUR and LIUR calculations;
 - iv. The uncompensated care factor; and
 - v. The estimated initial annual payment amount;
- h. Hospitals shall notify the department by October 31 of any adjustments in the department's initial calculations;

- i. The department shall make any necessary adjustments and shall issue an initial DSH payment to each hospital in one (1) lump-sum payment on or before November 30, for the disproportionate share funds available during the corresponding federal fiscal year. If the federal disproportionate share allotment for the Commonwealth has not been published through the Federal Register by November 15, the department may pay a portion but no less than ninety percent (90%) of the expected annual payment prior to the publication of the annual federal allotment. If a partial initial payment is made, the remaining amount shall be paid within sixty (60) days after the date upon which notice of the Commonwealth's federal allotment is published through the Federal Register; and
 - j. An initial DSH payment shall not be subject to appeal;
2.
 - a. 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.
 - b. Using the surveys submitted in accordance with subsection (8)(a) of this section, 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.
 - c. The department shall calculate a final DSH payment as follows:
 - i. Each university hospital shall receive a final DSH payment equal to one hundred percent (100%) of the hospital's total uncompensated costs so long as the total final DSH payments to all university hospitals do not exceed the maximum allotment to the university pool as set forth in subsection (3)(a) of this section. If total uncompensated care cost for the pool exceeds the pool's maximum allotment, the final 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 for all hospitals within the university pool. In this event, each hospital's final DSH payment shall be calculated by multiplying the hospital's uncompensated care factor by the total fund allocated to the hospitals within the respective pool under subsection (3)(a) of this section;
 - ii. For hospitals in the acute care pool and the psychiatric pool, the department shall recalculate each hospital's uncompensated care factor using examined data. The final uncompensated care factor for each hospital that qualifies as

an essential hospital shall be computed using two hundred percent (200%) of the hospital's total uncompensated care costs using examined data;

- iii. If a hospital has a negative uncompensated care cost, their uncompensated care cost will be excluded in the calculation of uncompensated care factors; and
 - iv. The department shall compare each hospital's initial DSH payment with the hospital's final DSH payment and with the hospital's hospital-specific DSH limit to determine if any underpayment or an overpayment exists.
- d. By September 30 of the fourth year following the year in which an initial DSH payment is made, the department shall provide each hospital with a final DSH reconciliation report which, at a minimum, shall indicate the following:
- i. A hospital's final MIUR and LIUR status;
 - ii. Final uncompensated care factor and underlying data;
 - iii. Final DSH payment; and
 - iv. If applicable, the amount of any overpayment to be paid to the department and the due date for repayment.
- e. If an overpayment is identified, repayment shall be made by January 31 of the following year, which is five (5) years following the year in which an initial DSH payment is made.
- f. Hospitals shall notify the department by October 31 of any corrections to the department's calculations.
- g. 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. Final DSH payments shall be issued by the department within sixty (60) days of the due date for the repayment of funds from hospitals with a DSH overpayment. If all repayments have not yet been received by the due date, the department shall distribute the funds collected as of the due date, and shall issue additional payments on a timely basis upon collection of all remaining outstanding overpayments.
- h. Any funds remaining after the reconciliation process shall be redistributed pursuant to subparagraph 3. of this paragraph; and
3. 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 follows:
- a. Funds shall first be distributed to all hospitals in the same pool as the hospitals from which the overpayments were recovered, and the funds shall be distributed in a proportional manner in relation

to each hospital's remaining total uncompensated care costs in accordance with the hospital's examined DSH survey for the applicable DSH year;

- b. In the proportional distribution, the distribution factor for each hospital that qualifies as an essential hospital shall be computed using two hundred percent (200%) of the hospital's total remaining uncompensated care costs; and
 - c. If DSH funds remain after making this distribution to other hospitals in the same pool, funds shall be distributed proportionally to hospitals in the acute care pool, university pool, and private psychiatric hospitals in the psychiatric pool in relation to each hospital's remaining total uncompensated care costs in accordance with the hospital's examined Medicaid DSH survey for the applicable DSH year.
- (4) Notwithstanding any other provision to the contrary, total annual disproportionate share payments made to state mental hospitals, university hospitals, acute care hospitals, critical access hospitals, comprehensive physical rehabilitation hospitals, long-term acute care hospitals, and private psychiatric hospitals in each state fiscal year shall be equal to the maximum amount of disproportionate share payments established under the Federal Balanced Budget Act of 1997 and any amendments thereto. Disproportionate share payments made to a hospital shall not exceed the hospital's total uncompensated costs or the hospital's hospital-specific DSH limit.
- (5) The secretary of the Cabinet for Health and Family Services shall promulgate administrative regulations, pursuant to KRS Chapter 13A, for the administration and implementation of this section.
- (6) All hospitals receiving reimbursement under this section shall display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay."
- (7) The hospital shall, upon request by the Cabinet for Health and Family Services, submit any supporting documentation to substantiate compliance with the audit requirements established by 42 C.F.R. sec. 455.
- (8) (a) 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. Extension requests shall be received ten (10) days prior to the deadline. Extensions shall be limited to rare circumstances which prevent the hospital from meeting the deadline despite its due diligence. Extensions shall be granted for no more than thirty (30) calendar days from the original due date. A new in-state hospital lacking six (6) months of cost report information necessary to calculate an initial DSH payment shall submit a limited DSH survey to determine eligibility no later than the September 1 immediately prior to the department's initial DSH payment calculation. A hospital may submit corrections to an applicable Medicaid DSH survey prior

to the scheduled start date of the department's desk review.

- (b) The department shall notify each hospital in advance of the desk review of the opportunity to submit corrections to the Medicaid DSH survey.
- (c) The department and each Medicaid managed care organization shall supply a paid claims listing (PCL) to each hospital within ninety (90) days of the last day of the hospital's fiscal year end date and a second set of data twelve (12) months after the hospital's fiscal year end date. The PCL shall include all claims with discharge dates or service dates, as applicable, within the hospital's fiscal year that are paid from the first day of the hospital's fiscal year to ninety (90) days or twelve (12) months, respectively, after the end of the hospital's fiscal year. For all hospitals, the department and each Medicaid managed care organization shall provide separate reports for adjudicated claims associated with both inpatient services and outpatient services provided to eligible members. If the PCL data is inaccurate or unavailable, providers shall complete the DSH survey using internal data.
- (d) The department shall specify a timetable for hospitals to update DSH audit survey data.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 76, sec. 2, effective July 14, 2018. -- Amended 2010 Ky. Acts ch. 142, sec. 1, effective July 15, 2010. -- Amended 2005 Ky. Acts ch. 99, sec. 258, effective June 20, 2005; and ch. 120, sec. 14, effective June 20, 2005. -- Amended 2001 Ky. Acts ch. 164, sec. 9, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 310, sec. 2, effective April 4, 2000. -- Amended 1998 Ky. Acts ch. 82, sec. 21, effective July 15, 1998; ch. 426, sec. 217, effective July 15, 1998; and ch. 545, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 512, sec. 85, effective July 15, 1994. -- Created 1993 (2d Extra. Sess.) Ky. Acts ch. 2, sec. 20, effective June 8, 1993.

Legislative Research Commission Note (7/1/2006). The amendments to this statute made in 2005 Ky. Acts ch. 107, sec. 1, have not taken effect. Section 2 of 2005 Ky. Acts ch. 107 states: "This Act shall become effective upon certification to the Reviser of Statutes from the secretary of the Cabinet for Health Services that necessary federal approval of the proposed distribution of disproportionate share funds outlined in subsection (3) of Section 1 has been obtained. This Act shall not become effective if certification is not received prior to July 1, 2006." The Reviser of Statutes did not receive certification by that date.

Legislative Research Commission Note (7/15/98). This section was amended by 1998 Ky. Acts chs. 82, 426, and 545. Where these Acts are not in conflict, they have been codified together. Where a conflict exists between ch. 426 and ch. 545, Acts ch. 545, which was a nonrevisory Act, prevails under KRS 7.136(3).