

907 KAR 10:820. Disproportionate share hospital distributions.

RELATES TO: KRS 205.565, 205.637, 205.639, 205.640, 216.380, 42 C.F.R. Parts 412, 413, 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395f(l), 1395ww(d)(5)(f), 1395x(mm), 1396a, 1396b, 1396d, 1396r-4

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.637(3), 205.639, 205.640, 205.6401, 205.6403, 216.380(12), 42 C.F.R. Parts 412, 413, 447.252, 447.253, 447, Subpart E, 42 U.S.C. 1395ww(d)(5)(F), 1396a, 1396r-4

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes disproportionate share hospital fund distribution provisions in accordance with KRS 205.639, 205.640, 205.6401, and 205.6403.

Section 1. Definitions.

- (1) "Base year" means the year of historical Medicaid DSH survey data used to determine initial DSH payments.
- (2) "Department" is defined by KRS 205.639(4).
- (3) "Disproportionate share hospital" or "DSH" means an in-state hospital that:
 - (a) Has a Medicaid inpatient utilization rate of one (1) percent or higher; and
 - (b) Meets the criteria established in 42 U.S.C. 1396r-4(d).
- (4) "Final disproportionate share hospital payment" or "final DSH payment" is defined by KRS 205.639(6).
- (5) "Hospital-specific disproportionate share hospital limit" or "hospital-specific DSH limit" is defined by KRS 205.639(7).
- (6) "Initial disproportionate share hospital payment" or "initial DSH payment" is defined by KRS 205.639(8).
- (7) "Medicaid disproportionate share hospital survey" or "Medicaid DSH survey" is defined by KRS 205.639(12), and may include an attestation by a hospital that information has not changed from the submission of an original Medicaid DSH survey.
- (8) "Medicaid inpatient utilization rate" or "MIUR" is defined by KRS 205.639(14).
- (9) "Total uncompensated care costs" is defined by KRS 205.639(19).

Section 2. Disproportionate Share Hospital Distribution General Provisions.

- (1) Beginning with the state fiscal year 2019 DSH payment, each DSH payment shall be made in accordance with KRS 205.639, 205.640, 205.6401, and 205.6403.
- (2) During the determination of an initial DSH payment, the department may adjust a hospital's total uncompensated care costs reported on the hospital's base year Medicaid DSH survey if the amount reported appears likely to result in a substantial redistribution of DSH funds that could have been avoided by adjusting the hospital's total uncompensated care costs.
- (3) If an overpayment has been identified, the hospital has not filed a timely appeal pursuant to 907 KAR 1:671, and repayment was not made by the hospital on or before January 31, pursuant to KRS 205.640, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 3. Disproportionate Share Hospital Medicaid DSH Survey Submission Provisions.

- (1) Each Medicaid DSH survey submitted for the purpose of determining initial DSH payment amounts shall be submitted in accordance with the timeline established in KRS 205.640.

(2) Each Medicaid DSH survey and supporting documentation submitted pursuant to subsection (1) of this section shall be updated prior to the start of the final DSH examination to incorporate more complete data.

(a) The updated Medicaid DSH survey and the accompanying supporting documentation shall be submitted no later than October 31 of the calendar year ending two (2) calendar years after the end of the state fiscal year to which the DSH payment pertains.

(b) The updated Medicaid DSH survey and the accompanying supporting documentation shall be submitted even if no changes were made since the original submission.

(c) A submission of a Medicaid DSH survey by a hospital shall serve as certification that all Medicaid and uninsured DSH data is:

1. Complete;
2. Accurate; and
3. In agreement with the hospital's internal records.

(3) If a provider does not have twelve (12) months of cost report data needed to determine an initial DSH payment, the cost report used in determining the provider's initial DSH payment shall be prioritized as follows:

(a) The most recent cost report, based on the fiscal year end, in the base year with greater than or equal to six (6) months of data;

(b) The most recent cost report, based on the fiscal year end, from the year prior to the base year with greater than or equal to six (6) months of data; or

(c) If a cost report is not available with at least six (6) months of data, the new provider proxy method shall be utilized pursuant to KRS 205.640(3)(e)1.d.

Section 4. Disproportionate Share Hospital Medicaid DSH Payment Appeals Provisions.

(1) An initial DSH payment shall not be subject to appeal in accordance with KRS 205.640; and

(2) A final DSH payment shall be subject to appeal in accordance with 907 KAR 1:671.

Section 5. Disproportionate Share Hospital Medicaid DSH Survey Payment Redistribution Provisions. For state fiscal year 2011 to state fiscal year 2018, a DSH payment shall be redistributed in accordance with this section.

(1) A DSH payment found in the DSH audit process for a given state fiscal year that exceeds the DSH limit for a hospital shall be recouped from that hospital in order to reduce the DSH payment to the limit established pursuant to this administrative regulation.

(a) The excess amount identified shall be due to the department within sixty (60) days after notification, unless an appeal is filed in a timely fashion pursuant to 907 KAR 1:671.

(b) If a hospital does not file a timely appeal pursuant to 907 KAR 1:671 and does not submit the excess amount established pursuant to this subsection within sixty (60) days, the department shall withhold future payments to the hospital until the department has collected in full the amount owed by the hospital to the department.

(2) A payment that is recouped from a hospital as a result of the DSH audit shall be redistributed to hospitals that have been determined by the department to have paid less than their hospital-specific DSH limit pursuant to this administrative regulation.

(3) Each redistribution shall:

(a) Occur proportionately to the original distribution of DSH funds; and

(b) Not exceed each hospital's specific DSH limit.

(4) If, because of the hospital-specific DSH limits, DSH funds cannot be fully redistributed within the original distribution pool established pursuant to subsection (3) of

this section, the excess funds shall be redistributed to the other distribution pools in proportion to the original DSH payments made by the department.

(5) If the Medicaid program's original DSH payments do not fully expend the federal DSH allotment for any state fiscal year, the remaining DSH allotment shall be:

- (a) Retroactively paid to each hospital that is determined to have received less than its hospital-specific DSH limit after consideration of any potential redistributions pursuant to subsection (1) of this section;
- (b) Proportional to the original DSH payment made to each hospital; and
- (c) Limited to each hospital's specific DSH limit.

Section 6. Federal Approval and Federal Financial Participation. The department's coverage of DSH payments or other services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation;
- (2) Availability of state funds; and
- (3) Centers for Medicare and Medicaid Services' approval.

(34 Ky.R. 1610; Am. 2195; 2409; eff. 6-6-2008; Recodified from 907 KAR 1:820; eff. 5-3-2011; 45 Ky.R. 2218, 2930, 3184; eff. 5-31-2019.)