CMS Publishes DSH Payment Allotments and Finalizes Long-awaited DSH Reporting Requirements

Two items in Friday's Federal Register signal that, in the waning days of the Bush Administration, CMS is still pursuing actions affecting hospitals that serve a disproportionate share of low-income and Medicaid patients. The first is the annual publication of state Medicaid Disproportionate Share Hospital (DSH) Payment Allotments. The second notice finalizes a regulation, first proposed in 2005, that will require states to report the source and calculation of their Medicaid DSH payments in far more detail than previously required.

Increased DSH Allotments for Fiscal Year 2009

The CMS Notice setting forth the Federal DSH allotments for Fiscal Year 2009 increases many states' allotments for the first time since 2004. In the Medicare Prescription Drug, Improvement and Modernization Act of 2003 ("MMA"), Congress provided that DSH allotments for states other than those in the "low DSH" category would continue at the 2004 level until such time as a state's allotment meets or exceeds a CMS-determined target amount. CMS has determined that most states will reach this amount in fiscal year 2009 and thus trigger an increase in their annual DSH allotments. In future fiscal years, these allotments will generally continue to increase by the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) for the prior fiscal year.

The Fiscal Year 2009 DSH **allotment notice** is now available.

Finalized DSH Reporting Requirements

CMS also published a **Final Rule**, effective January 19, 2009, implementing new auditing and reporting requirements that states must satisfy with regard to their DSH payments.

A proposed version of this rule published in 2005 would have expanded state reporting obligations by requiring detailed information on recipient hospitals, total DSH payments and other Medicaid payments, total cost of care and uncompensated costs, and intergovernmental transfers of funds. States that failed to meet these requirements would have forfeited their right to receive federal matching funds for DSH. In response, hospitals and other commenters objected to the administrative burden of complying with these reporting obligations. They also expressed concern that the rule's definition of uncompensated care costs, which excluded bad debt, physician services and certain emergency services to undocumented immigrants, could effectively lower hospital-specific limits on DSH payments to the detriment of safety-net institutions and the patients they serve.

While the Final Rule lessens the burden of compliance by removing the obligation to report intergovernmental transfers and each hospital's unduplicated count of Medicaid eligible and uninsured individuals, the rule generally adopts the controversial provisions that govern the calculation of uncompensated care. The Final Rule also contains a transition period for the new state DSH audits, deferring the deadlines for the 2005 and 2006 rate-year audits to December 31, 2009, and for the 2007 rate-year audit to December 31, 2010.