Medicaid Disproportionate Share Hospital (DSH) Funding in State Fiscal Year 2020

House Bill 286 (2018) Report to the Alaska Legislature Finance Committees and the Legislative Finance Division

November 2020

This report is submitted by the Department of Health and Social Services – Division of Behavioral Health, the Office of Rate and Review, and the Division of Finance and Management Services.

Report Definitions

- **DSH Agreement:** establishes a contractual relationship between the Division of Behavioral Health and qualifying hospitals
- **Encounter:** a unit of service, visit, or face-to-face contact that is a covered service under an agreement with the department (7 AAC 150.180(p)(4))
- **Federal allotment:** the amount of money that the federal government will match the state for DSH program payments (50-50 match)
- **FFY:** federal fiscal year
- **Hospital Presumptive Eligibility (Medicaid):** a Medicaid eligibility determination process that hospitals use to apply for temporary Medicaid for uninsured individuals who appear to be presumptively eligible due to their income level
- **Medicaid Disproportionate Hospital Payment (DSH):** a federal funding source for states to provide supplemental payments to qualifying hospitals
- **SFY:** state fiscal year

House Bill 286 (2018)

Legislative intent language was included in HB 286 (the 2018 operating budget bill) that directed the Department of Health and Social Services (DHSS) to submit a report on Medicaid Disproportionate Share Hospital (DSH) funding to the co-chairs of the Finance Committees and the Legislative Finance Division by November 15 of 2019 and 2020.

HB 286 directs the department to include in the report the following items:

1. The disbursement and use of federal Disproportionate Share Hospital (DSH) dollars by community and regional hospitals;
2. The annual amount of federal DSH funds which the state is not claiming; and
3. Future strategies for claiming those funds, including the possibility of hospitals matching those funds, to improve outcomes for patients, providers, and the public.

Medicaid Disproportionate Share Hospital (DSH) Funding

Background

Medicaid disproportionate share hospital (DSH) payments provide federal funding (at a 50-50 match, federal and state; updated to a COVID-19 56.2-43.8 match, federal and state effective January 1, 2020, through the end of the public health emergency) for supplemental payments to qualifying hospitals that provide certain services to a disproportionate share of low-income patients. DSH payments are designed to offset high levels of uncompensated care costs that are incurred by hospitals.

Per 7 AAC 150.180(b), to qualify for DSH payments a hospital must meet the following requirements unless they serve predominantly those under 18 (i.e. a children's hospital) or did not offer nonemergency obstetric services as of December 27, 1987:

- Be a general acute care hospital, a specialty hospital, or an inpatient psychiatric hospital

- Have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance, unless they qualify for the exception set out in 42 U.S.C 1396r-4(d)(2)

- Have a minimum Medicaid utilization rate of not less than one percent for the qualifying year

- On or before October 1 of the calendar year that precedes the payment period, the hospital must submit to the department the required forms and documentation set out in 7 AAC 150.180(b)(4)(A)-(C)

The federal allotment is the amount of money that the federal government will match the State of Alaska for funding DSH program payments. Traditionally, DSH payments are a 50-50 match between federal and state funding. The Families First Coronavirus Response Act (FFCRA) was signed into law on March 18, 2020. Section 6008 of the FFCRA provides a temporary 6.2 percentage point increase beginning January 1, 2020 and extending through the last day of the calendar quarter in which the federal public health emergency terminates (including any extension).

Historically, the State of Alaska utilizes less than the total federal DSH allotment amount. In State Fiscal Year (SFY) 2020, the federal DSH allotment was $23,820,269. A state match of $19,766,683 would be required to receive the full $43,586,952 of available DSH funding.

Behavioral Health DSH Payment Classifications

Under the DSH program, there are multiple classification types. In Alaska, six of the eight special needs DSH classifications are utilized to cover the Division of Behavioral Health's (DBH) target client population:

- Institutional Community Health Care Disproportionate Share Hospital (ICHC DSH),
- Mental Health Clinic Assistance Disproportionate Share Hospital (MHCA DSH),
- Substance Abuse Treatment Provider Disproportionate Share Hospital (SATP DSH)
- Single Point of Entry Psychiatric Disproportionate Share Hospital (SPEP DSH),
- Designated Evaluation and Treatment Disproportionate Share Hospital (DET DSH), and
- Institution for Mental Disease Disproportionate Share Hospital (IMD DSH).

A table with the above DSH classifications and definitions can be found in the Appendix, DSH Definitions and Approval Requirements.

The special needs DSH classifications are agreement driven, meaning hospitals approach the department and enter a contract for payment under a specific classification. As most of the special needs classifications pertain to behavioral health services provided in a hospital setting, DBH is the agency that enters into these agreements with qualifying hospitals. Special needs DSH agreements between DBH and hospitals receiving DSH payments help to alleviate overcrowding at the Alaska Psychiatric Institute (API) and to reduce placement in correctional settings. The types of services provided by these DSH classification agreements vary, but can include 24/7 psychiatric emergency room services, Title 47 civil commitments for evaluation and treatment, emergency mobile outreach response and psychiatric

emergency telephone coverage, mental health observation, crisis intervention and stabilization, and referrals to community services.

How Qualifying Alaska Hospitals Utilize Behavioral Health DSH

Behavioral Health DSH payments are designed to offset high levels of uncompensated care costs that are incurred by hospitals providing acute care. The DSH program compensates qualifying hospitals for services rendered to patients in need of emergency behavioral health services by paying for services for patients who: 1) are unable to apply for Hospital Presumptive Eligibility (HPE), 2) qualify for retroactive Medicaid coverage but who do not complete the application process through the Division of Public Assistance, or 3) are uninsured and low-income, and they refuse to apply for Medicaid.

Some DSH contracts require services that are not eligible for Medicaid reimbursement under the Medicaid State Plan to be provided to all patients, regardless of coverage. Others require the DSH funds to only be spent on allowable, billable Medicaid encounters that are not otherwise compensated by another payer, including Medicaid, or private insurance (when the patient has no coverage).

Hospital Presumptive Eligibility (HPE) and DSH

Hospitals assist potentially Medicaid eligible patients with applying for HPE.

If a patient is determined eligible for Medicaid HPE, HPE is effective on the same date a patient applies. This is not always the same day as the date of the hospital admission. Unlike many medical and surgical services, psychiatric hospital services include patients who are frequently unable to complete Medicaid HPE applications on the day of admission. This means that there may be a gap in payment coverage between when the hospital began rendering care to the patient (the actual start date of services beginning at hospital admission) and the date for when a patient is stabilized enough to apply for Medicaid HPE and the hospital may begin billing for services.

If approved for Medicaid HPE, a patient may follow up and apply for retroactive Medicaid through the Division of Public Assistance (DPA) back to the date of hospital admission. If Medicaid HPE is approved for the services provided to the patient, the hospital may bill before the claims filing period ends within one year from the date the retroactive Medicaid was issued. If a patient does not follow up with a retroactive Medicaid request, then the hospital may allocate DSH funds to the unpaid portion of the hospital services.

To prevent duplicative claiming for the same patient services to both Medicaid HPE and DSH programs, hospitals are allowed time past the end of the fiscal year to submit their final DSH reports to DBH. This allows hospitals time to determine if services can be retroactively billed to Medicaid before the claims period ends and prior to submitting DSH reports to DBH.

Increase in State of Alaska Utilization of Special Needs DSH Classifications

For many years, DBH contracted with three hospitals that provided services in two of the six DBH related special needs DSH classifications. Providence Alaska Medical Center provides single-point-of-entry psychiatric (SPEP) services. Bartlett Regional Hospital and Fairbanks Memorial Hospital provide

designated evaluation and treatment (DET) services. In SFY 2020, the Mat-Su Regional Medical Center was added as a DET provider.

In response to the capacity challenges at Alaska Psychiatric Institute (API), an additional $14,000,000 in DSH funding was appropriated through HB 286 to DHSS for SFY 2019 and SFY 2020. The additional DSH funds provided payments to general acute care hospitals impacted by API's capacity challenges. As a result of API's reduction in bed capacity, general acute care hospitals received an increase in the number of patients who needed uncompensated mental health care, which was provided through their acute care units.

In SFY 2020, DBH contracted with ten different hospitals. Bartlett Regional Hospital found that they were not using their Mental Health Clinic Assistance (MHCA) DSH funds and moved them into their DET allotment. Additional DSH funding will provide funding for transportation, due to airline shutdowns and the increase of transportation costs during the COVID-19 public health emergency.

SFY 2020 DSH Disbursement by Community and Regional Hospitals and Unclaimed Federal DSH Funds

2020 DSH Payment Amounts (not including IMD DSH)

Table 1 | 2020 DSH Payment Amounts

2020 DET & DSH Payment Amounts					
Hospital	**Community**	**DSH Classification**	**State Funds**	**Federal Funds**	**Total Payment Amount**
Historical Hospitals that Received DSH Payments					
Bartlett Regional Hospital	Juneau	DET	$ 119,623	$ 153,489	$ 273,112
Fairbanks Memorial Hospital ++	Fairbanks	DET			$ -
Mat-Su Regional Medical Center*	Mat-Su	DET	$ -	$ -	$ -
Providence Alaska Medical Center	Anchorage	SPEP	$ 1,108,586	$ 1,422,433	$ 2,531,019
Total			$ 1,228,209	$ 1,575,922	**$ 2,804,131**
2020 ACHI DSH Payments					
Alaska Regional Hospital	Anchorage	SATP	$ 876,000	$ 1,124,000	$ 2,000,000
Central Peninsula Hospital	Soldotna/Kenai	MHCA	$ 262,800	$ 337,200	$ 600,000
Fairbanks Memorial Hospital	Fairbanks	SPEP	$ 1,100,000	$ 1,100,000	$ 2,200,000
Petersburg Medical Center	Petersburg	ICHC	$ 87,600	$ 112,400	$ 200,000
Providence Kodiak Island Medical Center	Kodiak	SATP	$ 131,400	$ 168,600	$ 300,000
Providence Seward Medical Center	Seward	ICHC	$ 438,000	$ 562,000	$ 1,000,000
South Peninsula Hospital	Homer/Kenai	SATP	$ 219,000	$ 281,000	$ 500,000
Total			$ 3,114,800	$ 3,685,200	**$ 6,800,000**
TOTAL Combined 2020 DSH PAYMENTS			$ 4,343,009	$ 5,261,122	**$ 9,604,131**

++ Payments are still pending for Fairbanks Memorial Hospital for SFY 2020.

* The Mat-Su Regional Medical Center did not submit completed DET claims for SFY 2020.

2020 DSH IMD Limit and Payments

Institution for mental disease (IMD) DSH payments have been separated from the other DSH payment classifications. In SFY 2020, the API total payment was $13,986,994. There were no unclaimed IMD DSH funds.

Table 2 | 2020 IMD DSH LIMIT and Payments

2020 IMD DSH Payments					
Hospital	**Community**	**DSH Classification**	**State Funds**	**Federal Funds**	**Total Payment Amount**
Historical Hospitals that Received DSH Payments					
Alaska Psychiatric Institute	Anchorage	IMD	$ 6,126,305	$ 7,860,689	$ 13,986,994
Federal 2020 SOA IMD DSH LIMIT			$ 6,126,305	$ 7,860,689	$ 13,986,994
Unclaimed Federal 2020 IMD DSH Funds			$ -	$ -	**$** -

Federal Aggregate DSH Reductions and Regulation Litigation

DSH Reductions

The Affordable Care Act included a provision to implement aggregate reductions to the annual DSH allotment that was to begin in FFY 2014, due to estimated reductions in the level of uncompensated care in hospitals from patients qualifying for Medicaid expansion.

Congress has repeatedly delayed the reductions, such that they are not scheduled to take effect until FFY 2020. The Centers for Medicare and Medicaid Services (CMS) was required to implement $4 billion in cuts in FFY 2020 (from November 22, 2019 through June 30, 2020). In FFY 2020, per guidance from CMS, section 3813 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)(Pub. L. 116-136, enacted March 27, 2020) eliminated $4 billion in Medicaid DSH allotment reductions applicable to FFY 2020 that were scheduled to take effect on May 23, 2020, reduced the FFY 2021 DSH allotment reductions from $8 billion to $4 billion, and delayed the start of FFY 2021 DSH allotment reductions until December 1, 2020.

DSH Regulation Litigation

The Impact to Alaska

The two pending court cases on regulation guidance that CMS first issued in 2010 and codified as regulation in 2017 related to DSH payment calculation [2017 DSH rule], were favorably ruled on behalf of CMS. Based on the court rulings, CMS will be enforcing the DSH third party payer (TPP) final rule as it applies to all hospital services furnished on or after June 2, 2017. The department will continue to engage with providers on the implementation of the methodology and situations where it causes overpayment to providers to ensure compliance with federal rules.

History of the Litigation

In 2010, CMS issued new guidance on the calculations used for the hospital specific DSH limit, “costs incurred” by hospitals providing care to Medicaid beneficiaries and the uninsured. CMS’ 2010 guidance provided in two “Frequently Asked Questions” (FAQs 33 and 34) that the “hospital-specific DSH limit” payments to hospitals must be net of any payments made to the hospital by Medicare or private insurers on behalf of individuals who are also dually enrolled in Medicaid. Prior to CMS’ 2010 guidance,

hospitals could receive DSH payments in addition to payments by Medicare or private insurers on behalf of individuals who are also dually enrolled in Medicaid.

In 2017, CMS finalized a regulation codifying the agency's interpretation of Section 1923(g) [2017 DSH Rule]. The rule went into effect on June 2, 2017, meaning that the regulation is only applicable to services provided after June 2, 2017. In March 2018, the U.S. District Court for the District of Columbia held that the regulation was inconsistent with the text of Section 1923 and issued a nationwide injunction against the application of the regulation. In an announcement issued on December 31, 2018, CMS formally withdrew previously posted guidance about CMS' 2010 interpretation of the hospital-specific DSH limit.

In August 2019, the D.C. Circuit Court reversed the district court's decision in the Children's Hospital case[1] enjoining the regulations. The D.C. Circuit Court rejected the hospital's argument that the 2017 regulation was inconsistent with the text of Section 1923. The court also rejected the plaintiffs' arguments that the 2017 DSH Rule was arbitrary and capricious. The cases[2] were appealed by the Department of Health and Human Services to the 8th Circuit and 5th Circuit Courts of Appeals.

Litigation Update

In November 2019 and April 2020, both the 8th Circuit Court of Appeals and 5th Circuit Court of Appeals rejected the hospital's argument that the 2017 Rule conflicts with the statutory purpose of the hospital-specific limit or that the 2017 DSH Rule was arbitrary and capricious. Both Circuit Court of Appeals reversed and remanded the Opinion and Order of the U.S. District Court for the District of Columbia dated February 9, 2018, and the Judgement dated March 27, 2018.

SFY 2020 Future Strategies for DSH: Claiming DSH Allotment Funds and Improving Outcomes

For SFY 2020, DHSS will pay DSH in accordance with the agreements signed with the hospitals listed on page 4 of this report, pending review of uncompensated care logs and facility specific limit (FSL) calculations, to verify that each hospital still qualifies for DSH funds. In accordance with the terms of a recent settlement[3], DHSS will provide DSH funding, to the extent available, for nontribally-operated hospitals[4] that serve people with mental illness to increase hospital-based mental health care.

[1] *Children's Hosp. Ass'n of Tex. v. Azar, 2018 U.S. Dist. LEXIS 35962 (D.D.C. Mar. 6, 2018)*
[2] *Missouri Hospital Association v. Hargan, 2018 U.S. Dist. LEXIS 22024 (W.D. Mo. Feb. 9, 2018); Baptist Memorial Hospital-Golden Triangle, Inc. et al. v. Azar et al., No. 17-cv-00491 (S.D. Miss. Jun. 25, 2018)*
[3] *Disability Law Center v. State of Alaska, Final Judgment [Proposed] Case No. 3AN-18-9814CI, Page 9 of 18*
[4] Tribal hospitals are not eligible to receive DHSS funding. However, they do receive Indian Health Services funding.

Appendix

DSH DBH Definitions and Approval Requirements

DSH Classifications | DBH Target Client Population	
DSH Classification	**Short Description**
Institutional Community Health Care Disproportionate Share Hospital (**ICHC DSH**)	A hospital other than an IMD that is eligible for a DSH payment may qualify for an ICHC DSH payment adjustment if the hospital enters into an agreement with the department for medical and hospital care expenses for individuals in institutions who are not Medicaid eligible. Qualifying hospitals must comply with the requirements of the agreement, which include reporting the number of ICHC encounters for use in determining the appropriate distribution of ICHC DSH funds among all hospitals that qualify for an ICHC DSH payment.
Mental Health Clinic Assistance Disproportionate Share Hospital (**MHCA DSH**)	A hospital other than an IMD that is eligible for a DSH payment may qualify for a MHCA DSH payment adjustment if the hospital enters into an agreement with the department to provide mental health services to a mental health clinic. Qualifying hospitals must comply with the requirements of the agreement, which include reporting the number of MHCA encounters for use in determining the appropriate distribution of MHCA DSH funds among all hospitals that qualify for an MHCA DSH payment.
Substance Abuse Treatment Provider Disproportionate Share Hospital (**SATP DSH**)	A hospital, other than an IMD that is eligible for a DSH payment, may qualify for an SATP DSH payment adjustment if the hospital enters into an agreement with the department to provide substance abuse treatment services to a substance abuse treatment provider. Qualifying hospitals must comply with the requirements of the agreement, which include reporting the number of SATP encounters for use in determining the appropriate distribution of SATP DSH funds among all hospitals that qualify for an SATP DSH payment.

Single Point of Entry Psychiatric Disproportionate Share Hospital (**SPEP DSH**)	A hospital, other than an IMD that is eligible for a DSH payment, may qualify for an SPEP DSH payment adjustment if the hospital enters into an SPEP DSH agreement with the department to provide single-point-of-entry psychiatric services. Qualifying hospitals must comply with the requirements of the agreement, which include reporting the number of SPEP encounters for use in determining the appropriate distribution of SPEP DSH funds among all hospitals that qualify for an SPEP DSH payment.
Designated Evaluation and Treatment Disproportionate Share Hospital (**DET DSH**)	A hospital, other than an IMD that is eligible for a DSH payment, may qualify for a DET DSH payment adjustment if the hospital is designated as an evaluation and treatment facility as required by department regulations (7 AAC 72) and it enters into an agreement with the department. Qualifying hospitals must comply with the requirements of the agreement, which include reporting the number of DET encounters for use in determining the appropriate distribution of DET DSH funds among all hospitals that qualify for a DET DSH payment.
Institution for Mental Disease Disproportionate Share Hospital (**IMD DSH**)	A psychiatric hospital eligible for a DSH payment may qualify for an IMD DSH payment adjustment if the hospital is designated to receive involuntary commitments under state law. In Alaska, the Alaska Psychiatric Institute (API) is the only qualifying hospital under this category. The total amount of funds available for IMD DSH payments is limited by the appropriation of the legislature and the federal percentage of federal DSH funding allowed for IMD payments. The IMD DSH classification receives its own federal allotment, separate from the other DSH classifications.