

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Medicaid

Regulation/Package Title: BHPP Hospital Free and Disproportionate Share Hospitals DSH (ERF 120497)

Rule Number(s): 5160-2-07.5, 5160-2-07.17, 5160-2-08, 5160-2-08.1, 5160-2-09, 5160-2-10

Date: 12/23/15

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

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Rule 5160-2-07.5 sets forth the methodology for determining the hospital-specific disproportionate share limit. The rule is being proposed for rescission as it will be incorporated into OAC rule 5160-2-09.

Rule 5160-2-07.17 sets forth the requirement that hospitals shall provide, without charge, basic, medically necessary hospital-level services to the individual who is a resident of this state, is not a recipient of the Medicaid program, and whose income is at or below the federal poverty line. The rule is being proposed in order to comply with Ohio's five-year rule review requirements. The proposed changes include updates of references to the rule, to sections of the Ohio Administrative Code, and to the Ohio Revised Code.

Rule 5160-2-08 sets forth the policies for data used to determine disproportionate share and indigent care adjustments in the Hospital Care Assurance Program (HCAP). The rule is being proposed in order to comply with Ohio's five-year rule review requirements. The proposed changes include updates of references to the rule, to sections of the Ohio Administrative Code, to the Ohio Revised Code, and to the Hospital Cost Report (ODM 02930).

Rule 5160-2-08.1 describes the calculation used to determine the assessment rate applied to all hospitals. The rule is being proposed for amendment to establish the assessment rates and the cost levels that fund HCAP for the 2014 program year. The amendment updates paragraph (B) to specify to which program year(s) the rule applies and allows Ohio to access additional Federal funds. Paragraph (C) establishes an assessment rate of 0.8401502% of a hospital's adjusted total facility costs up to \$216,372,500 and 0.663% for any amount in excess of \$216,372,500. In addition, the rule is being proposed in order to comply with Ohio's five-year rule review requirements, which includes updates of references to the rule, to sections of the Ohio Administrative Code, and to the Ohio Revised Code.

Rule 5160-2-09 sets forth the conditions, requirements, and operation of HCAP as well as the distribution formula. This rule is being proposed for amendment to update the distribution formula for Disproportionate Share Hospital Payment Program (DSH) payment policies for program year 2014 and to incorporate the determination of the hospital-specific disproportionate share limit (OAC rule 5160-2-07.5, proposed for rescission). The proposed distribution formula is updated to reflect more current hospital data. In addition, the proposed amendment removes the uncompensated care for persons above one hundred percent of poverty from the Disability Assistance (DA) and Uncompensated Care Indigent Care Payment Pool, and updates to the percentages being allocated to the remaining payment policy pools. Furthermore, the rule is being proposed in order to comply with Ohio's five-year rule review requirements, which includes updates of references to the rule, to sections of the Ohio Administrative Code, to the Ohio Revised Code, and to the Hospital Cost Report (ODM 02930).

Rule 5160-2-10 sets forth the conditions, requirements, and operation of the disproportionate share and indigent care program adjustment for psychiatric hospitals as well as the distribution formula. The rule is being proposed in order to comply with Ohio's five-year

rule review requirements. The proposed changes include updates of references to the rule, to sections of the Ohio Administrative Code, to the Ohio Revised Code, and to the Hospital Cost Report (ODM 02930).

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

5164.02, 5168.02, 5168.06

3. Does the regulation implement a federal requirement? Yes. Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? Yes. *If yes, please briefly explain the source and substance of the federal requirement.*

As the state Medicaid agency, the Department is required by Section 1923 of the Social Security Act to implement a DSH program to help offset the cost of Medicaid shortfall and the cost of care to the uninsured population that is incurred by hospitals.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Section 1923 of the Social Security Act requires states to implement a DSH program and make additional payments to hospitals, but the federal statutes provide states with broad flexibility in distributing payments. Therefore, these rules specify requirements and regulations for Ohio's DSH program.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The Department believes that these regulations are important as they provide hospitals with additional funds to offset the cost of Medicaid shortfall and the cost of care to the uninsured. Without these regulations, hospitals that have a high volume of uninsured and/or Medicaid patients may struggle to maintain services to the general public.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The success of this regulation in terms of outputs is determined by examining the distribution of approximately \$500-550 million to hospitals in each program year. The distributed amount is used to offset the Medicaid shortfall and the cost of care to the uninsured.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

The Ohio Hospital Association (OHA) took part in the development of these regulations.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

On June 20, 2014, OHA submitted a proposal to the Department to update the distribution formula so that it reflects more current hospital data and to update the predetermined

percentage of the total funds available for distribution allocated to each pool. The Department accepted OHA's proposal, which is incorporated into these regulations.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Financial data reported by hospitals to the Department of Medicaid on the Hospital Cost Report (ODM 02930) is used to develop the assessments rates and also used to measure hospitals' reported cost levels for their uncompensated care burden in relation to all other hospitals' uncompensated care costs.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

None. Section 5168.06 of the Revised Code is very specific about the program, including how the assessment rates are to be established and the schedule for assessments.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

No; these rules were developed to comply with the requirements of Section 5168.06 of the Revised Code.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

These rules were developed specifically for the DSH program and were reviewed by the Bureau of Health Plan Policy, OMA, Department of Medicaid, and ODM Legal Services to ensure that duplication does not exist.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Department assesses all hospitals in Ohio. Also, the financial model used to determine the assessment rates are examined in great detail for accuracy by the Department and OHA. In accordance with Section 5168.08 of the Revised Code, a hospital may seek reconsideration of its assessment amount, and a public hearing is held for any hospital to have the opportunity to ask for reconsideration; these rules set forth the process for such requests.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

OAC rule 5160-2-08.1 imposes a HCAP assessment on all Ohio hospitals.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

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All hospitals are expected to pay the assessment on or before the specified dates. Failure to comply results in a penalty as required by OAC rule 5160-2-09.

c. Quantify the expected adverse impact from the regulation.

OAC rule 5160-2-08.1 requires acute care hospitals to pay an assessment of 0.8401502 percent of their adjusted total facility costs up to \$216,372,500 and 0.663 percent for any amount in excess of \$216,372,500. Hospitals will be required to pay approximately \$8.8 million more than was needed to fund HCAP 2013; this is due to an increase in Ohio's federal allotment. However, these funds will be used to make DSH payments to acute care hospitals totaling \$594 million through OAC rule 5160-2-09, and will outweigh the total assessments paid by the hospitals.

With regards to the penalty – we anticipate that hospitals will comply with the assessment due dates of the assessment and thus will not be subject to any penalties.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

These regulations will provide approximately \$422 million in federal funds to Ohio, which will be distributed to Ohio hospitals to help mitigate some of their uncompensated care costs.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. Compliance is required by Revised Code sections 5168.20 to 5168.28.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

Questions may be directed to the Hospital Services Section (Hospital_Policy@medicaid.ohio.gov) of ODM.