CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Medicaid

Regulation/Package Title: BHPP Hospital Disproportionate Share Hospital

Rule Number(s): 5160-2-08.1, 5160-2-09

Date: 8/24/2016

Rule Type:

- ☐ New
- X 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- ☐ Rescinded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.

   Rule 5160-2-08.1 of the administrative code, 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 Hospital Care Assurance Program (HCAP) for the 2016 program year, and for the 2017 program year. The amendment updates paragraph (B) to specify to which program years the rule applies and allows Ohio to access additional Federal funds. Paragraph (C) establishes an assessment rate of 0. 8335154% of a hospital's adjusted total facility costs up to $216,372,500 and 0.668% for any amount in excess of $216,372,500. The sum of the two products will be each hospital's assessment amount for program year 2016. Paragraph (D) establishes an assessment rate of one and a half per cent of a hospital's adjusted total facility costs up to $216,372,500 and one per cent for any amount in excess of $216,372,500. The sum of the two products will be each hospital's assessment amount for program year 2017. Finally, the proposed rule will be further amended to include the department may establish a rate lower than the rates described in paragraph D(2) of this rule through the notification and reconsideration procedures described in paragraph (G) of this rule.

Rule 5160-2-09 of the administrative code sets forth the distribution formula for the payment policies for disproportionate share hospitals (DSH). This rule is being proposed for amendment to update the distribution formula for payment policies for DSH for use in program year 2016 and program year 2017 and each year thereafter. The proposed rule updates the predetermined percentage of the total funds available for distribution allocated to each of the seven payment policy pools.

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

   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 the distribution of approximately $600-$625 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.**
If applicable, please include the date and medium by which the stakeholders were initially contacted.

The Ohio Hospital Association (OHA) took part in the development of these regulations. The OHA submitted to the Department its recommendations for updates for the 2016 and 2017 program year.

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

On October 15, 2015**,** OHA submitted a proposal to the Department to update the distribution formula in rule 5160-2-09 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.

On June 23, 2016, OHA submitted an additional request to include in-state crossover claims in the hospital-specific disproportionate share limit. The Department believes that in these times of rapid change in the health care environment, it is important for Ohio Department of Medicaid (ODM) to maintain a commitment to providing support to hospitals that provide a disproportionate amount of care to straight/traditional (non-crossover, or patients who are not dually eligible for Medicare) Medicaid recipients and the uninsured. Therefore, at this time the Department would prefer to leave the hospital-specific DSH limit calculation unchanged.

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) (revision date June 16, 2015) 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. This is a federally mandated program.

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. ORC 5168.06 is the only funding mechanism for the required state share for the program.

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, the Department did not specifically consider a performance-based regulation. These rules were developed to comply with the requirements of Section 5168.06 of the Revised Code. This is a federally mandated program.

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 acute care 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 acute care hospitals.

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

All acute care 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.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

OAC rule 5160-2-08.1 requires acute care hospitals to pay an assessment of 0.8335154% of their adjusted total facility costs up to $216,372,500 and 0.668 % for any amount in excess of $216,372,500. The sum of the two products will be each hospital's assessment amount for program year 2016. Hospitals will be required to pay approximately $4 million more than was needed to fund HCAP 2015; 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 $613 million through OAC rule 5160-2-09, and will outweigh the total assessments paid by the hospitals.

A penalty of $1,000 per day will be imposed upon hospitals that either do not report the required information on time or do not pay their assessments by the assigned due date.We anticipate that hospitals will comply with the assessment due dates 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 $383 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 5168.01 to 5168.09.

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.