

April 21, 2023

Submitted electronically via: www.regulations.gov

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Medicaid Program: Disproportionate Share Hospital Third-Party Payer Rule (CMS-2445-P)

Dear Administrator Brooks-LaSure,

Vizient, Inc. appreciates the opportunity to comment on the Medicaid Program; Disproportionate Share Hospital Third-Party Payer Rule (RIN 0938-AV00) which proposes regulatory changes to the Medicaid disproportionate share hospital (DSH) payments authorized by the Consolidated Appropriations Act, 2021 (hereinafter “Proposed Rule”). While Vizient continues to oppose cuts to the DSH program and advocate for legislative change, we also offer recommendations for CMS to reduce challenges associated with implementation of third-party payer related policies.

Background

Vizient, Inc. provides solutions and services that improve the delivery of high-value care by aligning cost, quality, and market performance for more than 60% of the nation’s acute care providers, which includes 97% of the nation’s academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than \$130 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

Recommendations

The Medicaid DSH program is vital in assisting hospitals that serve high numbers of Medicaid and uninsured patients. More than 2,500 hospitals in the U.S. receive DSH payments to address Medicaid underpayment and uncompensated care, which helps ensure patients have

access to critical community services.¹ DSH adjustment payments provide additional help to hospitals that serve a disproportionate number of low-income patients. States receive an annual DSH allotment to help cover the costs of hospitals that provide care to low-income patients that are not paid by other payers. This annual allotment calculation includes requirements to ensure that the DSH payments to individual hospitals are not higher than their actual uncompensated costs.

A recent MACPAC [report](#) stated that hospitals reported a \$24.8 billion Medicaid shortfall for 2020, a 30.5 percent increase from 2019. The impact of the COVID-19 Public Health Emergency (PHE) on operating margins as well as the increase in Medicaid enrollment due to the continuous coverage requirements implemented during the COVID-19 PHE have had a significant impact on hospitals that receive DSH funds. MACPAC voiced concern about the impact of the DSH cuts mandated by the Affordable Care Act on safety-net hospitals' financial viability. Safety-net facilities provide essential services for their communities, and these cuts may require hospitals to make difficult decisions about potential cuts to services such as obstetrics and mental health.² As the unwinding of the PHE and Medicaid continuous enrollment begins, an [ASPE report](#) states that as many as 15 million people could be impacted, with some disenrolled permanently while others may leave and re-enroll in Medicaid at a later date. Thus, there is a critical need to ensure providers are supported in their efforts to serve low-income patients, particularly given that hospitals' financial challenges will persist even as the PHE ends.

Section 203 Implementation

The Proposed Rule is a step towards implementing provisions of Section 203 of the Consolidated Appropriations Act, 2021 (CAA, 2021)³ related to the treatment of third-party payers in the calculation of the hospital-specific DSH limits. As provided in the CAA, 2021, beginning October 1, 2021, the calculation of the Medicaid portion of the hospital-specific DSH limit can only include costs and payments for services furnished to beneficiaries for whom Medicaid is the primary payer. Hospitals in the 97th percentile of all hospitals with respect to inpatient days made up of patients who, for such days, were entitled to Medicare Part A benefits and to supplemental security income (SSI) benefits, are excepted from this limitation. While Vizient understands that CMS must implement Section 203, we remain concerned that these changes will dramatically reduce DSH reimbursements, impacting hospitals' ability to provide care their patients.

Defining and identifying which hospitals constitute the 97th percentile has been critical to implementing Sec. 203. Vizient understands that the Proposed Rule seeks to provide greater clarity for those hospitals that are eligible for the exception. CMS proposes determining a hospital's qualification for the 97th percentile exception as a prospective policy, proposing to

¹ MACPAC March 2023 report to Congress, Chapter 4: Annual Analysis of Medicaid DSH Allotments to States. <https://www.macpac.gov/wp-content/uploads/2023/03/Chapter-4-Annual-Analysis-of-Medicaid-DSH-Allotments-to-States.pdf>

² <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.0109>

³ Pub. L. 116-260.

release the list of rankings identifying eligible hospitals before October 1 of each year. As the timeline between the finalization of the Proposed Rule and October 1 will likely be short, Vizient urges CMS to release this list as soon as possible to allow hospitals maximum time to plan for these potential cuts. Further, Vizient encourages CMS to release a comprehensive list of each hospital's rankings – not just a list of those in the 97th percentile.

Conclusion

Vizient continues to [advocate](#) for the repeal of the Medicaid DSH cuts due to the potential impact on hospitals, patients, and communities. Understanding that altering or delaying the Medicaid DSH cuts would require legislative action, Vizient will continue to engage with Congress on this topic. We urge CMS to provide technical assistance to legislators and their staff to illustrate the ongoing uncompensated care burdens American hospitals continue to face.

Vizient thanks CMS for the opportunity to share feedback. Vizient membership includes a wide variety of hospitals ranging from independent, community-based hospitals to large, integrated health care systems that serve acute and non-acute needs. Individually, our members are integral partners in their local communities, and many are ranked among the nation's top health care providers. In closing, on behalf of Vizient, I would like to thank CMS for providing us the opportunity to comment on the Proposed Rule. Please feel free to contact me or Emily Jones at Emily.Jones@vizientinc.com if you have any questions or if Vizient may provide any assistance as you consider these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shoshana Krilow".

Shoshana Krilow
Senior Vice President of Public Policy and Government Relations
Vizient, Inc.