Hospitals may get millions after Medicare DSH ruling

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Hospitals may see a big bump in Medicare payments following a federal court ruling on how they are compensated for treating low-income patients.

The U.S. District Court for the Northern District of Texas last week vacated a 2023 regulation that limited hospitals' Medicare disproportionate-share hospital reimbursement, which helps support safety-net providers. Those hospitals may receive millions of dollars a year in additional DSH payments, which could help them manage looming Medicaid cuts and uncompensated care increases.

Here is what to know about the ruling and its effect on how hospitals are paid for uncompensated care.

What did the court decide?

A rule that took effect Oct. 1, 2023, meant hospitals no longer could count hospital patients they treated using uncompensated care pool funds in DSH payment calculations. Uncompensated care cost pools are meant to help pay for and expand care for uninsured and underinsured patients.

Last week's ruling vacated the 2023 regulation.

How does Medicaid factor into Medicare DSH payments?

Medicare DSH payments are calculated in part based on how many Medicaid patients hospitals treat.

What are the supplemental Medicaid programs at issue?

The ruling involves Section 1115 Medicaid demonstration waivers. States use them to pay for services that typically aren't reimbursed fully or at all, such as emergency care for immigrants lacking permanent legal status and social initiatives like housing. The waivers are budget-neutral, meaning they do not increase overall federal spending.

States that did not expand Medicaid coverage through the Affordable Care Act tend to use the funds more than expansion states.

What are uncompensated care pools?

States pay hundreds of millions of dollars a year to providers to help them cover uncompensated care costs. States can draw down federal Medicaid matching funds to increase the funds in those pools. Uncompensated care pools typically operate for three or five years at a time, and the government must approve extensions.

Which states are impacted by the ruling?

The decision applies to hospitals in states that have supplemental payment programs for uncompensated care pools.

Hospitals in states including Arizona, California, Florida, Hawaii, Kansas, Massachusetts, New Mexico, Tennessee and Texas have used those Section 1115 funding mechanisms.

Providers in Florida and Texas could benefit the most because those states have the biggest uncompensated care funding pools, said Sven Collins, a healthcare attorney at law firm Hooper Lundy & Bookman.

How could the ruling improve hospital finances?

Hospitals stand to receive higher DSH payments from fiscal 2024 onward.

Safety-net hospitals are expected to take the brunt of reductions in federal Medicaid funding and payer-mix changes stemming from the 2025 tax law. This ruling could help blunt that impact, said Mark Silberman, a healthcare attorney at law firm Benesch.

“It is a very difficult time for DSH hospitals. This decision could help them fight the onslaught that may be coming,” he said.

Could the ruling help preserve hospitals’ 340B eligibility?

Yes. Hospitals, depending on their location and who they treat, must dedicate a certain percentage of their inpatient care to low-income individuals to qualify for 340B drug discounts. The program provides safety-net providers an estimated 25%-50% discounts on outpatient medications and has helped keep some hospitals solvent.

Hospitals that operate near that threshold may be able to maintain 340B eligibility because those patients are now going to be counted, Silberman said.

“The impact of 340B is not small, that is where this decision could have a material financial impact,” he said.

How could the government respond to the ruling?

The Centers for Medicare and Medicaid Services could appeal the decision seeking to reinstate the 2023 regulation. The agency did not respond to a request for comment about the possibility of an appeal.

CMS also could decide to issue a new rule that would align with the ruling, said Leslie Goldsmith, a healthcare attorney at law firm Bass, Berry & Sims.

What are the next steps for hospitals?

Providers are reviewing their cost reports to see if they have any unsettled reimbursement disputes. If so, they can potentially file an amendment to their cost reports and add Medicaid patients to their DSH payment calculations, Goldsmith said.

“Providers will jump on this,” she said. “It is a very good decision for them.