

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-2409-N]

RIN 0938-ZB43

Medicaid Program; Final FY 2015 and Preliminary FY 2017 Disproportionate Share Hospital Allotments, and Final FY 2015 and Preliminary FY 2017 Institutions for Mental Diseases Disproportionate Share Hospital Limits

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final federal share disproportionate share hospital (DSH) allotments for federal fiscal year (FY) 2015 and the preliminary federal share DSH allotments for FY 2017. This notice also announces the final FY 2015 and the preliminary FY 2017 limitations on aggregate DSH payments that states may make to institutions for mental disease and other mental health facilities. In addition, this notice includes background information describing the methodology for determining the amounts of states' FY DSH allotments.

DATES: This notice is applicable December 4, 2017. The final allotments and limitations set forth in this notice are applicable for the fiscal years specified.

FOR FURTHER INFORMATION CONTACT: Stuart Goldstein, (410) 786-0694 and Richard Cuno, (410) 786-1111.

SUPPLEMENTARY INFORMATION:

I. Background

A. Fiscal Year DSH Allotments

A state's federal fiscal year (FY) disproportionate share hospital (DSH) allotment represents the aggregate limit on the federal share amount of the state's DSH payments to DSH hospitals in the state for the FY. The amount of such allotment is determined in accordance with the provisions of section 1923(f)(3) of the Social Security Act (the Act). Under such provisions, in general a state's FY DSH allotment is calculated by increasing the amount of its DSH allotment for the preceding FY by the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the previous FY.

The Affordable Care Act amended Medicaid DSH provisions, adding section 1923(f)(7) of the Act which would have required reductions to states' FY DSH allotments from FY 2014

through FY 2020, the calculation of which was described in the Disproportionate Share Hospital Payment Reduction final rule published in the September 18, 2013 **Federal Register** (78 FR 57293). Subsequent legislation, most recently by the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114-10, enacted on April 16, 2015) (MACRA), delayed the start of these reductions until FY 2018. The proposed rule delineating the methodology for the calculation of DSH allotment reductions scheduled to begin in FY 2018 was published in the July 28, 2017 **Federal Register** (82 FR 35155).

Because there are no reductions to DSH allotments for FY 2015 and FY 2017 under section 1923(f)(7) of the Act, as amended, this notice contains only the state-specific final FY 2015 DSH allotments and preliminary FY 2017 DSH allotments, as calculated under the statute without application of the reductions that would have been imposed under the Affordable Care Act provisions beginning with FY 2014. This notice also provides information on the calculation of such FY DSH allotments, the calculation of the states' institutions for mental diseases (IMDs) DSH limits, and the amounts of states' final FY 2015 IMD DSH limits and preliminary FY 2017 IMD DSH limits.

B. Determination of Fiscal Year DSH Allotments

Generally, in accordance with the methodology specified under section 1923(f)(3) of the Act, a state's FY DSH allotment is calculated by increasing the amount of its DSH allotment for the preceding FY by the percentage change in the CPI-U for the previous FY. Also in accordance with section 1923(f)(3) of the Act, a state's DSH allotment for a FY is subject to the limitation that an increase to a state's DSH allotment for a FY cannot result in the DSH allotment exceeding the greater of the state's DSH allotment for the previous FY or 12 percent of the state's total medical assistance expenditures for the allotment year (this is referred to as the 12 percent limit).

Furthermore, under section 1923(h) of the Act, federal financial participation (FFP) for DSH payments to IMDs and other mental health facilities is limited to state-specific aggregate amounts.

Under this provision, the aggregate limit for DSH payments to IMDs and other mental health facilities is the lesser of a state's FY 1995 total computable (state and federal share) IMD and other mental health facility DSH expenditures applicable to the state's FY 1995 DSH allotment (as reported on the Form

CMS-64 as of January 1, 1997), or the amount equal to the product of the state's current year total computable DSH allotment and the applicable percentage specified in section 1923(h) of the Act.

In general, we determine states' DSH allotments for a FY and the IMD DSH limits for the same FY using the most recent available estimates of or actual medical assistance expenditures, including DSH expenditures in their Medicaid programs and the most recent available change in the CPI-U used for the FY in accordance with the methodology prescribed in the statute. The indicated estimated or actual expenditures are obtained from states for each relevant FY from the most recent available quarterly Medicaid budget reports (Form CMS-37) or quarterly Medicaid expenditure reports (Form CMS-64), respectively, submitted by the states. For example, as part of the initial determination of a state's FY DSH allotment (referred to as the preliminary DSH allotments) that is determined before the beginning of the FY for which the DSH allotments and IMD DSH limits are being determined, we use estimated expenditures for the FY obtained from the August submission of the CMS-37 submitted by states prior to the beginning of the FY; such estimated expenditures are subject to update and revision during the FY before such actual expenditure data become available. We also use the most recent available estimated CPI-U percentage change that is available before the beginning of the FY for determining the states' preliminary FY DSH allotments; such estimated CPI-U percentage change is subject to update and revision during the FY before the actual CPI-U percentage change becomes available. In determining the final DSH allotments and IMD DSH limits for a FY we use the actual expenditures for the FY and actual CPI-U percentage change for the previous FY.

II. Provisions of the Notice

A. Calculation of the Final FY 2015 Federal Share State DSH Allotments, and the Preliminary FY 2017 Federal Share State DSH Allotments

1. Final FY 2015 Federal Share State DSH Allotments

Addendum 1 to this notice provides the states' final FY 2015 DSH allotments determined in accordance with section 1923(f)(3) of the Act. As described in the background section, in general, the DSH allotment for a FY is calculated by increasing the FY DSH allotment for the preceding FY by the CPI-U increase for the previous fiscal year. For purposes of

calculating the states' final FY 2015 DSH allotments, the preceding final fiscal year DSH allotments (for FY 2014) were published in the October 26, 2016 **Federal Register** (81 FR 74432). For purposes of calculating the states' final FY 2015 DSH allotments we are using the actual Medicaid expenditures for FY 2015. Finally, for purposes of calculating the states' final FY 2015 DSH allotments, the applicable historical percentage change in the CPI-U for the previous FY (FY 2014) was 1.6 percent; we note that this is the same as the estimated 1.6 percentage change in the CPI-U for FY 2014 that was available and used in the calculation of the preliminary FY 2015 DSH allotments which were published in the February 2, 2016 **Federal Register** (81 FR 5448).

2. Calculation of the Preliminary FY 2017 Federal Share State DSH Allotments

Addendum 2 to this notice provides the preliminary FY 2017 DSH allotments determined in accordance with section 1923(f)(3) of the Act. The preliminary FY 2017 DSH allotments contained in this notice were determined based on the most recent available estimates from states of their FY 2017 total computable Medicaid expenditures. Also, the preliminary FY 2017 allotments contained in this notice were determined by increasing the preliminary FY 2016 DSH allotments. The actual percentage increase in the CPI-U for FY 2016 was 0.9 percent (CMS originally published the preliminary FY 2016 DSH allotments in the October 26, 2016 **Federal Register** (81 FR 74432)).

We will publish states' final FY 2017 DSH allotments in a future notice based on the states' four quarterly Medicaid expenditure reports (Form CMS-64) for FY 2017 available following the end of FY 2017 utilizing the actual change in the CPI-U for FY 2016.

B. Calculation of the Final FY 2015 and Preliminary FY 2017 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a state can make to IMDs and other mental health facilities. FFP is not available for DSH payments to IMDs or other mental health facilities that exceed the IMD DSH limits. In this notice, we are publishing the final FY 2015 and the preliminary FY 2017 IMD DSH limits determined in accordance with the provisions discussed above.

Addendums 3 and 4 to this notice detail each state's final FY 2015 and preliminary FY 2017 IMD DSH limit,

respectively, determined in accordance with section 1923(h) of the Act.

III. Collection of Information Requirements

This notice does not impose any new or revised information collection or recordkeeping requirements or burden. While discussed in section I.B. of this notice and in Addendums 3 and 4, the requirements and burden associated with Form CMS-37 (OMB control number 0938-0101) and Form CMS-64 (OMB control number 0938-0067) are unaffected by this notice. Consequently, this notice, CMS-37, and CMS-64 are not subject to Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) associated with the publication of this notice.

IV. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, enacted on March 22, 1995) (UMRA '95), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This notice reaches the \$100 million economic threshold and thus is considered a major rule under the Congressional Review Act.

The final FY 2015 DSH allotments being published in this notice are approximately \$11 million more than the preliminary FY 2015 DSH allotments published in the February 2, 2016 **Federal Register** (81 FR 5448). The increase in the final FY 2015 DSH allotments is a result of being calculated by multiplying the actual increase in the CPI-U for 2014 by the final FY 2014 DSH allotments, while the preliminary FY 2015 DSH allotments were calculated by multiplying the estimated CPI-U for 2014 by the preliminary FY

2014 DSH allotments. Although the estimated and actual increase in the CPI-U remained the same at 1.6 percent, the preliminary FY 2014 DSH allotments were lower than the final FY 2014 DSH allotments and therefore the final FY 2015 DSH allotments are higher than the preliminary FY 2015 DSH allotments. The final FY 2015 IMD DSH limits being published in this notice are approximately \$695,000 more than the preliminary FY 2015 IMD DSH limits published in the February 2, 2016 **Federal Register** (81 FR 5448). The increases in the IMD DSH limits are because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY. Since the final FY 2015 DSH allotments were increased as compared to the preliminary FY 2015 DSH allotments, the associated FY 2015 IMD DSH limits for some states were also increased.

The preliminary FY 2017 DSH allotments being published in this notice have been increased by approximately \$118 million more than the preliminary FY 2016 DSH allotments published in the October 26, 2016 **Federal Register** (81 FR 74432). The increase in the DSH allotments is due to the application of the statutory formula for calculating DSH allotments under which the prior fiscal year allotments are increased by the percentage increase in the CPI-U for the prior fiscal year. The preliminary FY 2017 IMD DSH limits being published in this notice are approximately \$5.5 million more than the preliminary FY 2016 IMD DSH limits published in the October 2, 2016 **Federal Register** (81 FR 74432). The increases in the IMD DSH limits are because the DSH allotment for a FY is a factor in the determination of the IMD DSH limit for the FY. Since the preliminary FY 2017 DSH allotments are greater than the preliminary FY 2016 DSH allotments, the associated preliminary FY 2017 IMD DSH limits for some states also increased.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$34.5 million in any one year. Individuals and states are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this notice will not have significant

economic impact on a substantial number of small entities. Specifically, any impact on providers is due to the effect of the various controlling statutes; providers are not impacted as a result of the independent regulatory action in publishing this notice. The purpose of the notice is to announce the latest DSH allotments and IMD DSH limits, as required by the statute.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area for Medicaid payment regulations and has fewer than 100 beds. We are not preparing analysis for section 1102(b) of the Act because the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Medicaid statute specifies the methodology for determining the amounts of states' DSH allotments and IMD DSH limits; and as described previously, the application of the methodology specified in statute results in the decreases or increases in states' DSH allotments and IMD DSH limits for the applicable FYs. The statute applicable to these allotments and limits does not apply to the determination of the amounts of DSH payments made to specific DSH hospitals; rather, these allotments and limits represent an overall limit on the total of such DSH payments. For this reason, we do not believe that this notice will have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2017, that threshold is approximately \$148 million. This notice will have no consequential effect on spending by state, local, or tribal governments, in the aggregate, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this notice does not impose any costs on state or local governments or otherwise have Federalism implications, the requirements of E.O. 13132 are not applicable.

Executive Order 13771, titled "Reducing Regulation and Controlling Regulatory Costs," was issued on January 30, 2017. It has been determined that this notice is a transfer rule and is not a regulatory action for the purposes of Executive Order 13771.

A. Alternatives Considered

The methodologies for determining the states' fiscal year DSH allotments and IMD DSH limits, as reflected in this notice, were established in accordance with the methodologies and formula for determining states' allotments and limits as specified in statute. This notice does not put forward any further discretionary administrative policies for determining such allotments and limits, or otherwise.

B. Accounting Statement

As required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table

1, we have prepared an accounting statement showing the classification of the estimated expenditures associated with the provisions of this notice. Table 1 provides our best estimate of the change (decrease) in the federal share of states' Medicaid DSH payments resulting from the application of the provisions of the Medicaid statute relating to the calculation of states' FY DSH allotments and the increase in the FY DSH allotments from FY 2016 to FY 2017.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE FY 2016 TO FY 2017

[In millions]

Category	Transfers
Annualized Monetized Transfers. From Whom To Whom?.	\$118. Federal Government to States.

Congressional Review Act

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Dated October 11, 2017.

Seema Verma,
Administrator, Centers for Medicare & Medicaid Services.

Dated October 27, 2017.

Eric D. Hargan,
Acting Secretary, Department of Health and Human Services.

KEY TO ADDENDUM 1—FINAL DSH ALLOTMENTS FOR FY 2015

[The Final FY 2015 DSH Allotments for the NON-Low DSH States are presented in the top section of this addendum, and the Final FY 2015 DSH Allotments for the Low-DSH States are presented in the bottom section of this addendum.]

Column	Description
Column A	<i>State.</i>
Column B	<i>FY 2015 FMAPs.</i> This column contains the States' FY 2015 Federal Medical Assistance Percentages.
Column C	<i>Prior FY (2014) DSH Allotments.</i> This column contains the States' prior FY 2014 DSH Allotments.
Column D	<i>Prior FY (2014) DSH Allotments (Col C) × (100percent + Percentage Increase in CPIU): 101.6 percent.</i> This column contains the amount in Column C increased by 1 plus the percentage increase in the CPI-U for the prior FY (101.6 percent).
Column E	<i>FY 2015 TC MAP Exp. Including DSH.</i> This column contains the amount of the States' FY 2015 total computable (TC) medical assistance expenditures including DSH expenditures.
Column F	<i>FY 2015 TC DSH Expenditures.</i> This column contains the amount of the States' FY 2015 total computable DSH expenditures.
Column G	<i>FY 2015 TC MAP Exp. Net of DSH.</i> This column contains the amount of the States' FY 2015 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column E minus the amount in Column F.
Column H	<i>12 percent Amount.</i> This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column I	<i>Greater of FY 2014 Allotment or 12 percent Limit.</i> This column contains the greater of the State's prior FY (FY 2014) DSH allotment or the amount of the 12 percent limit, determined as the maximum of the amount in Column C or Column H.

KEY TO ADDENDUM 1—FINAL DSH ALLOTMENTS FOR FY 2015—Continued

[The Final FY 2015 DSH Allotments for the NON-Low DSH States are presented in the top section of this addendum, and the Final FY 2015 DSH Allotments for the Low-DSH States are presented in the bottom section of this addendum.]

Column	Description
Column J	<i>FY 2015 DSH Allotment.</i> This column contains the States' final FY 2015 DSH allotments, determined as the minimum of the amount in Column I or Column D. For states with "na" in Columns I or D, refer to the footnotes in the addendum.

ADDENDUM 1—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2015

State	FY 2015 FMAPS (percent)	Prior FY (2014) DSH allotments	Prior FY (2014) DSH allotment (Col C) × 100% + Pct increase in CPU:		FY 2015 TC MAP Exp. including DSH	FY 2015 TC DSH expenditures	FY 2015 TC MAP EXP. net of DSH Col E-F	"12% Amount" = Col G × .12/(1-.12)/ Col B* (in FS)	Greater of Col H Or Col C (12% Limit, FY 2014 allotment)	FY 2015 DSH allotment MIN Col I, Col D
			101.6%							
ALABAMA	68.99	\$328,262,759	\$333,514,963		\$5,264,823,220	\$482,949,270	\$4,781,873,950	\$694,651,308	\$694,651,308	\$333,514,963
ARIZONA	68.46	108,086,519	109,815,903		10,617,725,498	171,078,470	10,446,647,028	1,520,037,100	1,520,037,100	109,815,903
CALIFORNIA	50.00	1,170,270,080	1,188,994,401		82,139,045,889	2,390,079,654	79,748,966,235	12,591,942,037	12,591,942,037	1,188,994,401
COLORADO	51.01	98,745,708	100,325,639		7,301,119,320	196,484,794	7,104,634,526	1,114,813,865	1,114,813,865	100,325,639
CONNECTICUT	50.00	213,504,233	216,920,301		7,183,360,060	129,030,089	7,054,329,651	1,113,841,524	1,113,841,524	216,920,301
DISTRICT OF COLUMBIA	70.00	65,385,671	66,431,842		2,369,991,903	36,875,089	2,332,996,814	337,882,297	337,882,297	66,431,842
FLORIDA	59.72	213,504,233	216,920,301		21,320,462,370	358,797,341	20,961,665,029	3,147,939,570	3,147,939,570	216,920,301
GEORGIA	66.94	286,896,314	291,486,655		9,664,791,833	435,016,070	9,229,775,763	1,349,489,311	1,349,489,311	291,486,655
ILLINOIS	50.00	229,517,051	233,189,324		16,938,472,430	442,188,036	16,496,284,394	2,592,419,182	2,592,419,182	233,189,324
INDIANA	66.52	228,182,651	231,833,573		9,249,771,996	232,141,314	9,017,630,682	1,320,292,281	1,320,292,281	231,833,573
KANSAS	56.63	44,035,248	44,739,812		3,010,910,864	78,925,971	2,931,984,893	446,439,537	446,439,537	44,739,812
KENTUCKY	69.94	154,790,570	157,267,219		9,423,467,372	226,627,736	9,196,839,636	1,332,192,539	1,332,192,539	157,267,219
LOUISIANA 1	62.05	731,960,000	743,671,360		7,863,181,815	1,329,125,915	6,534,055,900	972,079,525	972,079,525	743,671,360
MAINE	61.88	112,089,722	113,883,158		2,477,405,878	42,093,817	2,435,312,061	362,543,168	362,543,168	113,883,158
MARYLAND	50.00	81,398,489	82,700,865		9,410,240,087	107,964,734	9,302,275,353	1,468,780,319	1,468,780,319	82,700,865
MASSACHUSETTS	50.00	325,593,956	330,803,459		15,378,247,995	0	15,378,247,995	2,428,144,420	2,428,144,420	330,803,459
MICHIGAN	65.54	282,893,110	287,419,400		15,867,358,420	336,597,089	15,530,761,331	2,281,403,282	2,281,403,282	287,419,400
MISSISSIPPI	73.58	162,796,978	165,401,730		5,136,317,498	224,546,417	4,911,771,081	704,270,444	704,270,444	165,401,730
MISSOURI	63.45	505,738,153	513,829,963		9,518,489,904	680,860,006	8,837,629,898	1,307,866,162	1,307,866,162	513,829,963
NEVADA	64.36	49,372,853	50,162,819		3,105,613,113	77,953,523	3,027,659,590	446,585,572	446,585,572	50,162,819
NEW HAMPSHIRE	50.00	170,908,561	173,643,098		1,716,225,884	108,694,387	1,607,531,497	253,820,763	253,820,763	173,643,098
NEW JERSEY	50.00	687,216,752	698,212,220		14,049,422,255	1,089,139,502	12,960,282,753	2,046,360,435	2,046,360,435	698,212,220
NEW YORK	50.00	1,714,705,875	1,742,141,169		57,896,956,615	3,431,160,259	54,465,796,356	8,599,862,583	8,599,862,583	1,742,141,169
NORTH CAROLINA	65.88	314,918,744	319,957,444		13,212,668,475	531,329,898	12,681,338,577	1,860,682,818	1,860,682,818	319,957,444
OHIO	62.64	433,680,475	440,619,363		21,423,012,674	686,937,454	20,736,075,220	3,077,980,454	3,077,980,454	440,619,363
PENNSYLVANIA	51.82	599,146,255	608,732,595		23,223,615,661	750,991,666	22,472,623,995	3,509,386,365	3,509,386,365	608,732,595
RHODE ISLAND	50.00	69,388,876	70,499,098		2,584,840,295	140,548,917	2,444,291,378	385,940,744	385,940,744	70,499,098
SOUTH CAROLINA	70.64	349,613,182	355,206,993		5,767,691,574	487,856,512	5,279,835,062	763,235,093	763,235,093	355,206,993
TENNESSEE 2	na	na	na		na	na	na	na	na	53,100,000
TEXAS	58.05	1,020,817,117	1,037,150,191		34,691,253,016	2,330,024,141	32,361,228,875	4,895,294,687	4,895,294,687	1,037,150,191
VERMONT 3	56.21	24,019,227	24,403,535		1,632,611,663	37,448,781	1,595,162,882	243,376,898	243,376,898	24,403,535
VIRGINIA	50.00	93,522,940	95,019,307		8,032,760,161	20,698,074	8,012,062,087	1,265,062,435	1,265,062,435	95,019,307
WASHINGTON	50.03	197,491,416	200,651,279		10,494,138,618	362,580,070	10,131,558,548	1,599,416,905	1,599,416,905	200,651,279
WEST VIRGINIA	71.35	72,057,679	73,210,602		3,646,548,197	72,590,493	3,573,957,704	515,589,315	515,589,315	73,210,602
TOTAL	0.00	11,140,511,397	11,318,759,579		451,612,422,553	18,029,335,809	433,583,086,744	66,549,622,938	66,549,622,938	11,371,859,581

LOW DSH STATES	
ALASKA	22,092,999
ARKANSAS	46,787,305
DELAWARE	9,819,111
HAWAII	10,570,301
IDAHO	17,828,139
IOWA	42,712,842
MINNESOTA	81,007,666
MONTANA	12,311,068
NEBRASKA	30,692,294
NEW MEXICO	22,092,999
NORTH DAKOTA	10,360,093
OKLAHOMA	38,657,915
OREGON	48,322,397
SOUTH DAKOTA	11,790,395
UTAH	20,942,613
WISCONSIN	100,915,788
WYOMING	241,612

LOW DSH STATES	
ALASKA	1,405,373,754
ARKANSAS	5,469,511,577
DELAWARE	1,860,130,571
HAWAII	1,957,983,075
IDAHO	1,715,448,736
IOWA	4,476,316,992
MINNESOTA	10,704,500,992
MONTANA	1,132,392,709
NEBRASKA	1,846,405,999
NEW MEXICO	4,920,345,001
NORTH DAKOTA	1,085,776,090
OKLAHOMA	4,703,038,531
OREGON	8,027,137,262
SOUTH DAKOTA	805,740,131
UTAH	2,147,978,557
WISCONSIN	7,893,501,866
WYOMING	558,961,575

ADDENDUM 1—FINAL DSH ALLOTMENTS FOR FISCAL YEAR: 2015—Continued

State	FY 2015 FMAP's (percent)	Prior FY (2014) DSH allotments	Prior FY (2014) DSH allotment (Col C) x 100% + Pct increase in CPIU:		FY 2015 TC,MAP Exp. including DSH	FY 2015 TC DSH expenditures	FY 2015 TC MAP EXP. net OF DSH Col E-F	"12% Amount" = Col G x .12/(1-.12/Col B) ² (In FS)	Greater of Col H Or Col C (12% Limit, FY 2014 allotment)	FY 2015 DSH allotment MIN Col I, Col D
			101.6%							
TOTAL LOW DSH STATES	0.00	522,322,313	530,679,470	60,710,543,418	472,985,203	60,237,558,215	9,095,068,543	9,095,068,543	530,679,469	
TOTAL	0.00	11,662,833,710	11,849,439,049	512,322,965,971	18,502,321,012	493,820,644,959	75,644,691,482	75,644,691,482	11,902,539,050	

¹ Louisiana's FY 2015 DSH allotment is determined under the provisions of section 1923(f)(3)(C) and (D) of the Act.

² Tennessee's DSH allotment for FY 2015 determined under section 1923(f)(6)(A) of the Act.

³ FMAP for Vermont for FY 2015 determined in accordance with section 1905(z)(1)(A) of the Act.

KEY TO ADDENDUM 2: PRELIMINARY DSH ALLOTMENTS FOR FY 2017

[The Preliminary FY 2017 DSH Allotments for the NON-Low DSH States are presented in the top section of this addendum, and the Preliminary FY 2017 DSH Allotments for the Low-DSH States are presented in the bottom section of this addendum.]

Column	Description
Column A	<i>State.</i>
Column B	<i>FY 2017 FMAPs.</i> This column contains the States' FY 2017 Federal Medical Assistance Percentages.
Column C	<i>Prior FY (2016) DSH Allotments.</i> This column contains the States' prior preliminary FY 2016 DSH Allotments.
Column D	<i>Prior FY (2016) DSH Allotments (Col C) × (100 percent + Percentage Increase in CPIU): 100.9 percent.</i> This column contains the amount in Column C increased by 1 plus the estimated percentage increase in the CPI-U for the prior FY (100.9 percent).
Column E	<i>FY 2017 TC MAP Exp. Including DSH.</i> This column contains the amount of the States' projected FY 2017 total computable (TC) medical assistance expenditures including DSH expenditures.
Column F	<i>FY 2017 TC DSH Expenditures.</i> This column contains the amount of the States' projected FY 2017 total computable DSH expenditures.
Column G	<i>FY 2017 TC MAP Exp. Net of DSH.</i> This column contains the amount of the States' projected FY 2017 total computable medical assistance expenditures net of DSH expenditures, calculated as the amount in Column E minus the amount in Column F.
Column H	<i>12 percent Amount.</i> This column contains the amount of the "12 percent limit" in Federal share, determined in accordance with the provisions of section 1923(f)(3) of the Act.
Column I	<i>Greater of FY 2016 Allotment or 12 percent Limit.</i> This column contains the greater of the State's preliminary prior FY (FY 2016) DSH allotment or the amount of the 12 percent Limit, determined as the maximum of the amount in Column C or Column H.
Column J	<i>FY 2017 DSH Allotment.</i> This column contains the States' preliminary FY 2017 DSH allotments, determined as the minimum of the amount in Column I or Column D. For states with "na" in Columns I or D, refer to the footnotes in the addendum.

TOTAL LOW DSH STATES	532,271,506	537,061,950	71,208,284,000	650,951,000	70,557,333,000	10,646,453,493	10,646,453,493	537,061,951
TOTAL	11,884,987,367	11,991,952,253	595,086,932,000	18,425,109,000	576,661,823,000	88,360,629,395	88,360,629,395	12,045,052,255

¹ Tennessee's DSH allotment for FY 2017 determined under section 1923(f)(6)(A) of the Act.

² Expenditures based on the amounts reported by States on the Form CMS-37.

KEY TO ADDENDUM 3—FINAL IMD DSH LIMITS FOR FY 2015

[The final FY 2015 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this addendum and the preliminary FY 2015 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the addendum.]

Column	Description
Column A	State.
Column B	<i>Inpatient Hospital Services FY 95 DSH Total Computable.</i> This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column C	<i>IMD and Mental Health Services FY 95 DSH Total Computable.</i> This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column D	<i>Total Inpatient Hospital & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C.</i> This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	<i>Applicable Percentage, Col. C/D.</i> This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	<i>FY 2015 Federal Share DSH Allotment.</i> This column contains the states' FY 2015 DSH allotments from Addendum 1, Column J.
Column G	<i>FY 2015 FMAP.</i>
Column H	<i>FY 2015 DSH Allotments in Total Computable, Col. F/G.</i> This column contains states' FY 2015 total computable DSH allotment (determined as Column F/Column G).
Column I	<i>Applicable Percentage Applied to FY 2015 Allotments in TC, Col E x Col H.</i> This column contains the applicable percentage of FY 2015 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	<i>FY 2015 TC IMD DSH Limit. Lesser of Col. I or C.</i> This column contains the total computable FY 2015 TC IMD DSH Limit equal to the lesser of the amount in Column I or Column C.
Column K	<i>FY 2015 IMD DSH Limit in Federal Share, Col. G x J.</i> This column contains the FY 2015 Federal Share IMD DSH limit determined by converting the total computable FY 2015 IMD DSH Limit from Column J into a federal share amount by multiplying it by the FY 2015 FMAP in Column G.

ADDENDUM 3—FINAL IMD DSH LIMIT FOR FY: 2015—Continued

State	Inpatient hospital services FY 95 DSH total computable	IMD and mental health services FY 95 DSH total computable	Total inpatient & IMD & mental health FY 95 DSH total computable Col B + C	Applicable percent Col C/D	FY 2015 allotment in FS	FY 2015 FMAPs (percent)	FY 2015 allotments in TC Col F/G	Applicable percentage applied to FY 2015 allotments in TC Col E x Col H	FY 2015 TC IMD limit (lesser of Col I or Col C)	FY 2015 IMD limit in FS Col G x J
TOTAL LOW DSH STATES	98,662,480	63,238,167	161,900,647	.....	530,679,469	.....	910,732,982	192,909,092	59,180,748	33,877,144
TOTAL	13,501,123,326	4,181,997,071	17,683,120,397	.....	11,902,539,050	.....	21,170,168,738	4,042,130,095	3,532,125,067	1,979,089,418

*Tennessee's DSH allotment for FY 2015 determined under section 1923(f)(6)(A) of the Act.

** Vermont's FMAP for FY 2015 determined in accordance with section 1905(z)(1)(A) of the Act.

KEY TO ADDENDUM 4—PRELIMINARY IMD DSH LIMITS FOR FY 2017

[The preliminary FY 2017 IMD DSH Limits for the Non-Low DSH States are presented in the top section of this addendum and the preliminary FY 2017 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the addendum.]

Column	Description
Column A	<i>State.</i>
Column B	<i>Inpatient Hospital Services FY 95 DSH Total Computable.</i> This column contains the States' total computable FY 1995 inpatient hospital DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column C	<i>IMD and Mental Health Services FY 95 DSH Total Computable.</i> This column contains the total computable FY 1995 mental health facility DSH expenditures as reported on the Form CMS-64 as of January 1, 1997.
Column D	<i>Total Inpatient Hospital & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C.</i> This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FY 1995 as reported on the Form CMS-64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	<i>Applicable Percentage, Col. C/D.</i> This column contains the "applicable percentage" representing the total Computable FY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(III) of the Act, for FYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	<i>FY 2017 Federal Share DSH Allotment.</i> This column contains the states' preliminary FY 2017 DSH allotments from Addendum 1, Column J.
Column G	<i>FY 2017 FMAP.</i>
Column H	<i>FY 2017 DSH Allotments in Total Computable, Col. F/G.</i> This column contains states' FY 2017 total computable DSH allotment (determined as Column F/Column G).
Column I	<i>Applicable Percentage Applied to FY 2017 Allotments in TC, Col E x Col H.</i> This column contains the applicable percentage of FY 2016 total computable DSH allotment (calculated as the percentage in Column E multiplied by the amount in Column H).
Column J	<i>FY 2017 TC IMD DSH Limit. Lesser of Col. I or C.</i> This column contains the total computable FY 2017 TC IMD DSH Limit equal to the lesser of the amount in Column I or Column C.
Column K	<i>FY 2017 IMD DSH Limit in Federal Share, Col. G x J.</i> This column contains the FY 2017 Federal Share IMD DSH limit determined by converting the total computable FY 2017 IMD DSH Limit from Column J into a federal share amount by multiplying it by the FY 2017 FMAP in Column G.

TOTAL LOW DSH STATES	98,662,480	63,238,167	161,900,647	.....	537,061,951	.....	921,257,282	195,321,094	59,364,480	34,006,155
TOTAL	13,501,123,326	4,181,997,071	17,683,120,397	.....	12,045,052,255	.....	21,437,081,826	4,094,492,949	3,541,368,213	1,983,667,490

* Tennessee's DSH allotment for FY 2017, determined under section 1923(f)(6)(A) of the Act, is \$53,100,000.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-6077-N]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of Decision To Lift the Temporary Moratorium on Enrollment of Non-Emergency Ground Ambulance Suppliers in Texas

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Lifting of temporary enrollment moratorium on non-emergency ground ambulance suppliers in Texas.

SUMMARY: This document announces that on September 1, 2017, the statewide temporary moratorium on the enrollment of new Medicare Part B non-emergency ground ambulance suppliers in Texas was lifted. This announcement also applies to the temporary moratorium on enrollment of non-emergency ground ambulance suppliers in Medicaid and the Children's Health Insurance Program in Texas.

FOR FURTHER INFORMATION CONTACT: Jung Kim, (410) 786-9370. News media representatives must contact CMS' Public Affairs Office at (202) 690-6145 or email them at press@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Implementation of Temporary Enrollment Moratoria

The Social Security Act (the Act) provides the Secretary with tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). In particular, section 1866(j)(7) of the Act provides the Secretary with authority to impose a temporary moratorium on the enrollment of new Medicare, Medicaid, or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines such a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs. Regarding Medicaid, section 1902(kk)(4) of the Act requires States to comply with any moratorium imposed by the Secretary unless the State determines that the imposition of such temporary moratorium would adversely impact Medicaid beneficiaries' access to care. In addition, section 2107(e)(1)(F) of the

Act provides that the Medicaid provisions in 1902(kk) are also applicable to CHIP.

In the February 2, 2011 **Federal Register** (76 FR 5862), CMS published a final rule with comment period titled, "Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers," which implemented section 1866(j)(7) of the Act by establishing new regulations at 42 CFR 424.570. Under § 424.570(a)(2)(i) and (iv), CMS, or CMS in consultation with the Department of Health and Human Services' Office of Inspector General (HHS-OIG) or the Department of Justice (DOJ), or both, may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type, or particular geographic locations, or both. At § 424.570(a)(1)(ii), CMS stated that it would announce any temporary moratorium in a **Federal Register** document that includes the rationale for the imposition of such moratorium.

Based on this authority and our regulations at § 424.570, we initially imposed moratoria to prevent enrollment of new Home Health Agencies, subunits, and branch locations¹ (hereafter referred to as HHAs) in Miami-Dade County, Florida and Cook County, Illinois, as well as surrounding counties, and Medicare Part B ground ambulance suppliers in Harris County, Texas and surrounding counties, in a notice issued on July 31, 2013 (78 FR 46339). These moratoria also applied to Medicaid and CHIP. We exercised this authority again in a notice published on February 4, 2014 (79 FR 6475) when we extended the existing moratoria for an additional 6 months and expanded them to include enrollment of HHAs in Broward County, Florida; Dallas County, Texas; Harris County, Texas; and Wayne County, Michigan and surrounding counties, and enrollment of ground ambulance suppliers in Philadelphia, Pennsylvania and surrounding counties. Then, we further extended these moratoria in documents issued on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), July 28, 2015 (80 FR 44967), and

¹ As noted in the preamble to the final rule with comment period implementing the moratorium authority (February 2, 2011, CMS-6028-FC (76 FR 5870)), home health agency subunits and branch locations are subject to the moratoria to the same extent as any other newly enrolling home health agency.

February 2, 2016 (81 FR 5444). On August 3, 2016 (81 FR 51120), we extended the moratoria for an additional 6 months and expanded them to statewide for enrollment of HHAs in Florida, Illinois, Michigan, and Texas, and non-emergency ground ambulance suppliers in New Jersey, Pennsylvania, and Texas. We also announced the lifting of temporary moratoria for all Part B emergency ambulance suppliers as well as emergency ambulance providers in Medicaid and CHIP.² Finally, on January 29, 2017 (82 FR 2363) and again on July 28, 2017 (82 FR 35122), we extended the statewide moratoria of HHAs in Florida, Illinois, Michigan, and Texas, and Part B non-emergency ground ambulance suppliers in New Jersey, Pennsylvania, and Texas for additional 6 month periods. These extensions also applied to such providers in Medicaid and CHIP.

II. Lifting a Temporary Moratorium

CMS has authority under § 424.570(d) to lift a temporary moratorium at any time in specified situations, including if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. On August 25, 2017, the President of the United States signed the Presidential Disaster Declaration for several counties in the State of Texas. As a result of the President's declaration, CMS carefully reviewed the potential impact of continued moratoria in Texas, and decided to lift the temporary enrollment moratorium on Medicare Part B non-emergency ground ambulance suppliers in Texas in order to aid in the disaster response to Hurricane Harvey. This lifting of the moratorium also applied to Medicaid and CHIP in Texas. A notification that CMS lifted the moratorium was published at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/ProviderEnrollmentMoratorium.html> and became effective on September 1, 2017. In accordance with § 424.570(d), CMS is also publishing this document in the **Federal Register** to announce this action. Non-emergency ground ambulance suppliers that were previously unable to enroll in Medicare, Medicaid or CHIP in Texas

² CMS also concurrently announced a demonstration under the authority provided in section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b-1(a)(1)(J)) that allows for access to care-based exceptions to the moratoria in certain limited circumstances after a heightened review of that provider has been conducted. This demonstration also applies to Medicaid and CHIP providers in each state. This announcement may be found in the **Federal Register** document issued on August 3, 2016 (81 FR 51116).