



Obstetric services requirement under DSH: Are your hospital's DSH funds in jeopardy?

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In April 2014, the Centers for Medicare & Medicaid Services (CMS) issued guidance regarding Medicaid disproportionate share hospital (DSH) audits. In the guidance, CMS stated that, in order to continue to be eligible for DSH funds, a hospital must meet the obstetric services requirement — a condition that has always existed but has, historically, not been enforced by all of the states (one of which is Ohio).

To comply with this requirement, hospitals must have at least two obstetricians with clinical privileges on the hospital's medical staff unless the hospital: (1) serves patients that are predominantly under 18 years of age; or (2) did not offer non-emergency obstetric services to the general population as of December 22, 1987; or (3) is a rural hospital with at least two physicians with clinical privileges on the hospital's medical staff permitting them to provide non-emergency obstetric services. For hospitals that do not have obstetricians on their medical staffs and that do not meet the first or second exception, we believe that arrangements can be established that will satisfy the remaining exception. However, we recommend that you work with your legal counsel to be sure that the arrangement is one that complies with the law as well as with the hospital's medical staff governing document requirements.

There are two other points of major importance. First, enforcement will be for rate year 2011 (i.e., DHS audits due by the end of 2014). It is our understanding that CMS will not make the requirement retroactive (i.e., recoupment will not be sought for periods prior to that time). Second, CMS has stated that it "will regard audit findings demonstrating DSH payments that exceed the hospital-specific DSH limits as representing discovery of overpayments to providers" and will return the recouped funds to the state. It is our understanding that CMS will not direct how the recouped funds are to be redistributed (i.e., this will continue to be a state-directed decision).



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