

SUBCHAPTER 13. ELIGIBILITY FOR AND BASIS OF PAYMENT FOR DISPROPORTIONATE SHARE HOSPITALS

10:52-13.1 Disproportionate share adjustment—general eligibility

(a) A disproportionate share hospital (DSH) shall be a hospital designated as such by the Commissioner of the Department of Human Services. At a minimum, each hospital with a Medicaid inpatient hospital utilization rate that is one standard deviation above the mean Medicaid utilization rate for hospitals receiving Medicaid payments in the State, and every hospital with a low-income utilization rate above 25 percent will be treated as a disproportionate share hospital.

(b) The Commissioner of the Department of Human Services may designate additional hospitals as disproportionate share hospitals if it is determined they serve a large number of low-income mentally ill or developmentally disabled clients.

(c) The Commissioner of the Department of Human Services may make additional disproportionate share payments to facilities operating under N.J.S.A. 18A:64G-1 et seq. providing a high level of charity and uncompensated care to low-income persons and persons with special needs.

(d) The Commissioner of the Department of Human Services may also designate a hospital as eligible for additional disproportionate share payments if it is determined that the hospital provides a high percentage of care (as defined in N.J.A.C. 10:52-13.5) in proportion to total operating revenue to patients with HIV, mental illness, tuberculosis, substance abuse and addiction, complex neonates, HIV as a secondary diagnosis, and mothers with substance abuse. In addition, to be designated as eligible for this additional disproportionate share payment, the facility shall have a high Charity Care plus Medicaid utilization rate (as defined in N.J.A.C. 10:52-13.5). A facility shall further demonstrate a commitment to the establishment and operation of a managed care program for the uninsured and other low-income persons.

Amended by R.1997 d.92, effective February 18, 1997.
See: N.J.R. 4698(a), 29 N.J.R. 80(a), 29 N.J.R. 600(b).

Substantially amended (d).
Amended by R.1997 d.541, effective December 15, 1997 (operative January 1, 1998).
See: 29 N.J.R. 3227(a), 29 N.J.R. 5325(a).

In (a), deleted the third sentence.
Recodified from 10:52-8.1 and amended by R.2000 d.29, effective January 18, 2000.

See: 31 N.J.R. 3151(a), 32 N.J.R. 276(a).

In (d) changed N.J.A.C. references throughout, and substituted a reference to complex neonates, HIV as a secondary diagnosis and mothers with substance abuse for a reference to neonatal complexity at the end of the first sentence.

10:52-13.2 Disproportionate share hospital (DSH) payment—general

The disproportionate share adjustment shall include an adjustment amount annually determined, as to N.J.A.C. 10:52-13.4, by the Commissioner, Department of Health and Senior Services in consultation with the Commissioner, Department of Human Services and, as to N.J.A.C. 10:52-13.3, 13.5, 13.6 and 13.7 by the Commissioner, Department of Human Services based upon a determination regarding payments for charity care. The annual DSH payments shall be calculated and distributed in accordance with all applicable Federal laws and regulations.

Amended by R.1994 d.432, effective August 15, 1994.

See: 26 N.J.R. 2241(a), 26 N.J.R. 3473(a).

Emergency Amendment, R.1994 d.440, effective August 1, 1994 (expired September 30, 1994).

See: 26 N.J.R. 3485(a).

Petition for Rulemaking.

See: 26 N.J.R. 3756(a).

Adopted Concurrent Proposal, R.1994 d.536, effective September 29, 1994.

See: 26 N.J.R. 3485(a), 26 N.J.R. 4392(a).

Amended by R.1995 d.13, effective January 3, 1995.

See: 26 N.J.R. 2239(a), 27 N.J.R. 152(a).

Petition for Rulemaking.

See: 27 N.J.R. 1818(b), 27 N.J.R. 2014(c).

Emergency amendment R.1996 d.425, effective August 13, 1996 (to expire October 12, 1996).

See: 28 N.J.R. 4115(a).

Adopted concurrent amendment, R.1996 d.520, effective October 11, 1996.

See: 28 N.J.R. 4115(a), 28 N.J.R. 4805(c).

Amended by R.1997 d.92, effective February 18, 1997.

See: 28 N.J.R. 4698(a), 29 N.J.R. 80(a), 29 N.J.R. 600(b).

In (a), amended subsection reference, substituted "charity care" for "charity and uncompensated care from the Health Care Subsidy Fund", and added reference to calculation and distribution of DSH; substantially amended (a)4; and added (a)6.

Amended by R.1997 d.541, effective December 15, 1997 (operative January 1, 1998).

See: 29 N.J.R. 3227(a), 29 N.J.R. 5325(a).

Inserted (a)2i(6), and (a)4i(4); and rewrote (a)6i.

Amended by R.1998 d.340, effective July 6, 1998.

See: 30 N.J.R. 1260(a), 30 N.J.R. 2486(b).

In (a), rewrote 2 and 4, and deleted a former 6.

Recodified from 10:52-8.2(a) and amended by R.2000 d.29, effective January 18, 2000.

See: 31 N.J.R. 3151(a), 32 N.J.R. 276(a).

Changed N.J.A.C. references throughout.

10:52-13.3 Eligibility and disproportionate share hospital payments for hospitals operating under N.J.S.A. 18A:64G-1

For facilities operating under N.J.S.A. 18A:64G-1 et seq., the disproportionate share allocation may be increased by an amount recommended by the Office of Management and Budget which will consider the total operating cost of the facility less any third party payments, including all other Medicaid payments, as well as payments from non-State sources for services provided by the hospital during the hospital's fiscal year.

Amended by R.1994 d.432, effective August 15, 1994.

See: 26 N.J.R. 2241(a), 26 N.J.R. 3473(a).

Emergency Amendment, R.1994 d.440, effective August 1, 1994 (expired September 30, 1994).

See: 26 N.J.R. 3485(a).

Petition for Rulemaking.

See: 26 N.J.R. 3756(a).

Adopted Concurrent Proposal, R.1994 d.536, effective September 29, 1994.

See: 26 N.J.R. 3485(a), 26 N.J.R. 4392(a).

Amended by R.1995 d.13, effective January 3, 1995.

See: 26 N.J.R. 2239(a), 27 N.J.R. 152(a).

Petition for Rulemaking.

See: 27 N.J.R. 1818(b), 27 N.J.R. 2014(c).

Emergency amendment R.1996 d.425, effective August 13, 1996 (to expire October 12, 1996).

See: 28 N.J.R. 4115(a).

Adopted concurrent amendment, R.1996 d.520, effective October 11, 1996.

See: 28 N.J.R. 4115(a), 28 N.J.R. 4805(c).

Amended by R.1997 d.92, effective February 18, 1997.

See: 28 N.J.R. 4698(a), 29 N.J.R. 80(a), 29 N.J.R. 600(b).

In (a), amended subsection reference, substituted "charity care" for "charity and uncompensated care from the Health Care Subsidy Fund", and added reference to calculation and distribution of DSH; substantially amended (a)4; and added (a)6.

Amended by R.1997 d.541, effective December 15, 1997 (operative January 1, 1998).

See: 29 N.J.R. 3227(a), 29 N.J.R. 5325(a).

Inserted (a)2i(6), and (a)4i(4); and rewrote (a)6i.

Amended by R.1998 d.340, effective July 6, 1998.

See: 30 N.J.R. 1260(a), 30 N.J.R. 2486(b).

In (a), rewrote 2 and 4, and deleted a former 6.

Recodified from 10:52-8.2(a)1 and amended by R.2000 d.29, effective January 18, 2000.

See: 31 N.J.R. 3151(a), 32 N.J.R. 276(a).

Substituted a reference to disproportionate share allocations for a reference to disproportionate share adjustments determined by the Essential Health Services.

10:52-13.4 Eligibility for and disproportionate share hospital payments from the Charity Care Component of the Health Care Subsidy Fund

(a) The recommendation from the Department of Health and Senior Services (DHSS) shall be calculated in the following manner pursuant to N.J.S.A 26:2H-18.

1. The determination of the value of the Charity Care Component of the Health Care Subsidy Fund shall be calculated in the following manner:

i. The Department of Health and Senior Services shall use the results of the charity care audit conducted as its definition of charity care incurred by all hospitals.

ii. The New Jersey Department of Health and Senior Services shall report the results of its audit of New Jersey acute care hospital's charity care that was conducted in accordance with N.J.A.C. 10:52-11 to the Division of Medical Assistance and Health Services.

(1) For purposes of determining annual charity care costs, the criteria in N.J.A.C. 10:52-11 shall not apply to a patient who is investigated by a county adjuster and found to be indigent by a court of competent jurisdiction pursuant to N.J.S.A. 30:4-1 et seq. A patient so found shall qualify for 100 percent charity care coverage. Hospitals with patients who qualify under this provision shall include the appropriate documentation from the court in the patient's file for audit.

(b) All charity care accounts shall be valued at the Medicaid rate as follows:

1. For inpatient accounts, the New Jersey Department of Health and Senior Services and the New Jersey Department of Human Services shall value each account at the rate Medicaid would have reimbursed hospitals for the services(s).

2. For outpatient accounts, outpatient charity care accounts written-off during the calendar year will be valued as follows: annual outpatient charity care charges multiplied by the ratio of the annual outpatient Medicaid payments to the annual outpatient Medicaid charges associated with paid claims. This Medicaid outpatient payment-to-charge ratio excludes billings for HealthStart and dental services.

3. Disproportionate share adjustments and final rate settlements for the service period shall not be taken into account for the recognition of charity care costs.

(c) For eligible hospitals, charity care subsidy amounts are determined as follows:

1. Eligible hospitals annual charity care subsidy amount is equal to charity care costs as determined by the audit and valued at Medicaid rates.

2. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) rate of increase used to set Medicaid hospital rates will be used to inflate charity care costs in the current year.

3. In no instances shall payments made during a calendar year exceed the preceding years audited and Medicaid rate valued amounts inflated by TEFRA rates used in the hospital rate setting system.

4. Any overpayments which result from interim payments exceeding the audited payment levels shall be recovered by offsetting all Medicaid payments.

(d) For periods in which the data source excludes Direct Graduate Medical Education (GME) and Indirect Medical Education (IME) in the Medicaid rate, the Medicaid rate shall be adjusted by hospital-specific GME and IME add-ons. Unless otherwise specified, for periods through State Fiscal Year 1999, the hospital-specific GME and IME add-ons shall be calculated using the most recent hospital data as of October 1 of each year preceding the distribution year. Effective for periods after State Fiscal Year 1999, the hospital-specific GME and IME add-ons shall be calculated using the most recent hospital data as of February 1 of each State fiscal year preceding the distribution year. These GME and IME add-ons shall not be revised as a result of any subsequent settlement and/or retrospective Medicaid rate adjustments. For the purpose of pricing charity care claims under this section, unless otherwise indicated, the Medicaid rate shall be defined as the Medicaid rate in effect on the date of discharge. The add-ons shall be calculated as follows:

1. The GME add-on shall be calculated as follows:

i. For charity care payments made for January 1998 through June 1998, the charity care GME add-on shall be calculated based on charity care's share of the teaching hospital's aggregate approved GME amount from Worksheet E-3 Part IV as reported on the 1996 submitted Medicare cost report. The hospital-specific charity care share shall be calculated using the sum of the hospital's total charity care gross charges from the New Jersey Hospital Cost Report as reported on Forms E-5 and E-6, divided by the sum of the hospital's gross charges from the New Jersey Hospital Cost Report as reported on Forms E-5 and E-6, after desk audit. The resulting charity care GME add-on shall be adjusted to exclude those inpatient charity care claims priced at the Medicaid rates prior to October 1, 1996, and shall be based on the percentage of charges written off as charity care between October 1, 1995 and September 30, 1996 with dates of service prior to October 1, 1995.

ii. For charity care payments made in State Fiscal Year 1999, the charity care GME add-on shall be calculated based on the charity care's share of the teaching hospital's aggregate approved GME amount from Worksheet E-3 Part IV as reported on the most recent submitted Medicare cost report as of October 1 preceding the distribution year. The hospital-specific charity care share shall be calculated using the sum of the hospital's total charity care gross charges from the New Jersey Hospital Cost Report as reported on Forms E-5 and E-6, divided by the sum of the hospital's gross charges from the New Jersey Hospital Cost Report as reported on Forms E-5 and E-6, after desk audit.

iii. For charity care payments made after State Fiscal Year 1999, the charity care GME add-on shall be calculated based on the charity care share of the teaching hospital's aggregate approved GME amount from Worksheet E-3 Part IV as reported on the most recent submitted Medicare cost report as of February 1 of each year preceding the distribution year. The hospital-specific charity care share shall be calculated using the sum of the hospital's total charity care gross charges from the New Jersey Hospital Cost Report as reported on Forms E-5 and E-6, divided by the sum of the hospital's gross charges from the New Jersey Hospital Cost Report as reported on Forms E-5 and E-6, after desk audit.

2. The IME add-on shall be calculated as follows:

i. For charity care payments made for January 1998 through June 1998, the IME add-on shall be calculated based on Medicare's IME formula, at 42 C.F.R. 412.105, incorporated herein by reference, as amended and supplemented. The teaching hospital's IME factor, as calculated by the Medicare IME calculation, shall be multiplied by the hospital-specific charity care inpatient claims priced at the Medicaid rate to arrive at the charity care IME add-on. The components of the

IME formula, IME intern and resident FTEs and maintained beds shall be taken from the 1996 Medicare submitted cost report. The IME formula used shall be the Medicare formula approved for the 1996 Medicare submitted cost report. This charity care IME add-on shall be adjusted to exclude those inpatient charity care claims priced at the Medicaid rates prior to October 1, 1996. (Charity care claims are priced at the Medicaid rate in effect when the services are rendered.) This adjustment shall be based on the percentage of inpatient charges written off as charity care between October 1, 1995 and September 30, 1996 with dates of service prior to October 1, 1995.

ii. For charity care payments made in State Fiscal Year 1999, the IME add-on shall be calculated based on Medicare's IME formula, at 42 C.F.R. 412.105, incorporated herein by reference, as amended and supplemented. The teaching hospital's IME factor, as calculated by the Medicare IME calculation, shall be multiplied by the hospital-specific charity care inpatient claims priced at the Medicaid rate to arrive at the charity care IME add-on. The components of the IME formula, IME intern and resident FTEs and maintained beds shall be taken from the most recent available Medicare submitted cost report as of October 1 preceding the distribution year. The IME formula used shall be the Medicare formula approved for the most recent available Medicare submitted cost report used for the calculation.

iii. For charity care payments made after State Fiscal Year 1999, the IME add-on shall be calculated based on Medicare's IME formula, at 42 C.F.R. 412.105, incorporated herein by reference, as amended and supplemented. The teaching hospital's IME factor, as calculated by the Medicare IME calculation, shall be multiplied by the hospital-specific charity care inpatient claims priced at the Medicaid rate to arrive at the charity care IME add-on. The components of the IME formula, IME intern and resident FTEs and maintained beds shall be taken from the most recent available Medicare submitted cost report as of February 1 of each year preceding the distribution year. The IME formula used shall be the Medicare formula approved for the most recent available Medicare submitted cost report used for the calculation.

(e) As provided in N.J.S.A. 26:2H-18.59e, the charity care subsidy shall be determined according to the following methodology:

1. The hospital-specific "documented charity care" shall be calculated from the dollar amount of charity care provided by the hospital that is submitted to the charity care fiscal intermediary and valued at the same rate paid to that hospital by the Medicaid program. A sample of the claims submitted by the hospital to the fiscal intermediary shall be subject to an audit conducted pursuant to charity care eligibility criteria. For each fiscal year, docu-

mented charity care shall be equal to the Medicaid-priced amounts of charity care claims submitted to the fiscal intermediary for the most recent calendar year, adjusted as necessary to reflect the audit results.

2. The hospital-specific "operating margin" shall be calculated using data from the three most current years' New Jersey Hospital Cost Reports and shall be equal to income from operations minus charity care subsidies divided by total operating revenue minus charity care subsidies. After calculating each hospital's operating margin, the Department shall determine the Statewide median operating margin.

3. The hospital-specific "profitability factor" shall be determined annually as follows. Those hospitals that are equal to or below the Statewide median operating margin shall be assigned a profitability factor of "1." For those hospitals that are above the Statewide median operating margin, the profitability factor shall be equal to:

$$\frac{.75 \times (\text{hospital specific operating margin} - \text{Statewide median operating margin})}{1 - \text{highest hospital specific operating margin} - \text{Statewide median operating margin}}$$

4. The hospital-specific "adjusted charity care" shall be equal to a hospital's documented charity care times its profitability factor.

5. The hospital-specific "revenue from private payers" shall be equal to the sum of the gross revenues reported to the Department in the hospital's most recently available New Jersey Hospital Cost Report for all non-governmental, or private third party payers including, but not limited to, Blue Cross and Blue Shield plans, commercial insurers and the non-governmental, or private accounts of health maintenance organizations. Gross revenue derived from governmental accounts of health maintenance organizations from the Medicare, Medicaid and NJ Family-Care (including NJ KidCare) programs, will not be included in the category of "revenue from private payers."

6. The hospital-specific "payer mix factor" shall be equal to a hospital's adjusted charity care divided by its revenue from private payers.

7. The "Statewide target payer mix factor" shall be equal to the lowest payer mix factor to which all hospitals receiving charity care subsidies can be reduced by spending all available charity care subsidy funding for that year.

8. The hospital-specific "income from operations" shall be defined by the Department of Health and Senior Services (Department) in accordance with financial reporting requirements established pursuant to N.J.A.C. 8:31B-3.3.

9. The hospital-specific "total operating revenue" shall be defined by the Department in accordance with financial reporting requirements established pursuant to N.J.A.C. 8:31B-3.3.

10. Charity care subsidy payments shall be based upon hospital-specific documented charity care.

11. If the Statewide total of adjusted charity care is less than available charity care funding, a hospital's charity care subsidy shall equal its adjusted charity care.

12. If the Statewide total of adjusted charity care is greater than available charity care funding, then the hospital-specific charity care subsidy shall be determined by allocating available charity care funds so as to equalize hospital-specific payer mix factors to the Statewide target payer mix factor. Those hospitals with a payer mix factor greater than the Statewide target payer mix factor shall be eligible to receive a subsidy sufficient to reduce their factor to that Statewide level. Those hospitals with a payer mix factor that is equal to or less than the Statewide target payer mix factor shall not be eligible to receive a subsidy.

Amended by R.1994 d.432, effective August 15, 1994.

See: 26 N.J.R. 2241(a), 26 N.J.R. 3473(a).

Emergency Amendment, R.1994 d.440, effective August 1, 1994 (expired September 30, 1994).

See: 26 N.J.R. 3485(a).

Petition for Rulemaking.

See: 26 N.J.R. 3756(a).

Adopted Concurrent Proposal, R.1994 d.536, effective September 29, 1994.

See: 26 N.J.R. 3485(a), 26 N.J.R. 4392(a).

Amended by R.1995 d.13, effective January 3, 1995.

See: 26 N.J.R. 2239(a), 27 N.J.R. 152(a).

Petition for Rulemaking.

See: 27 N.J.R. 1818(b), 27 N.J.R. 2014(c).

Emergency amendment R.1996 d.425, effective August 13, 1996 (to expire October 12, 1996).

See: 28 N.J.R. 4115(a).

Adopted concurrent amendment, R.1996 d.520, effective October 11, 1996.

See: 28 N.J.R. 4115(a), 28 N.J.R. 4805(c).

Amended by R.1997 d.92, effective February 18, 1997.

See: 28 N.J.R. 4698(a), 29 N.J.R. 80(a), 29 N.J.R. 600(b).

In (a), amended subsection reference, substituted "charity care" for "charity and uncompensated care from the Health Care Subsidy Fund", and added reference to calculation and distribution of DSH; substantially amended (a)4; and added (a)6.

Amended by R.1997 d.541, effective December 15, 1997 (operative January 1, 1998).

See: 29 N.J.R. 3227(a), 29 N.J.R. 5325(a).

Inserted (a)2i(6), and (a)4i(4); and rewrote (a)6i.

Amended by R.1998 d.340, effective July 6, 1998.

See: 30 N.J.R. 1260(a), 30 N.J.R. 2486(b).

In (a), rewrote 2 and 4, and deleted a former 6.

Recodified from 10:52-8.2(a)2 and 3 and amended by R.2000 d.29, effective January 18, 2000.

See: 31 N.J.R. 3151(a), 32 N.J.R. 276(a).

Rewrote the section.

Amended by R.2001 d.301, effective August 20, 2001.

See: 33 N.J.R. 2062(a), 33 N.J.R. 2811(a).

Added (e).

10:52-13.5 Eligibility for and payment of Hospital Relief Subsidy Fund DSH

(a) Hospitals eligible for additional disproportionate share payments may receive an additional payment determined by the Commissioner of the Department of Human Services from the Hospital Relief Subsidy Fund. This additional payment shall be based upon the facility's percentage of clients with HIV, mental health, tuberculosis, substance abuse and addiction, complex neonates, HIV as a secondary diagnosis, and mothers with substance abuse.