



## Policy Brief

April 19, 2019



### Will Senator Grassley Get His “Reality Check” on the Outdated DSH Formula?

Unless Congress takes action, CMS is slated to cut payments for Disproportionate Share Hospitals (DSH) by \$4 billion on October 1, 2019, with reductions totaling \$43 billion by 2025. These cuts, which were mandated by the Affordable Care Act (ACA), have been postponed by Congress multiple times. There are several discussions taking place to address the cuts and while consensus has not been reached, changes to the DSH formula are on the horizon. Chuck Grassley, Chairman of the Senate Finance Committee, recently wrote an [op-ed](#) supporting the DSH cuts and changes to the DSH formula. Florida Senator Marco Rubio and the Medicaid and CHIP Payment and Access Commission (MACPAC) have also recommended changes. Below are more details on the discussions taking place.

#### How to Implement the DSH Cuts

Several policymakers have agreed on the need to mitigate the impact of the DSH payment cuts, should they take effect. In its March [report](#) to Congress, MACPAC recommended phasing the cuts more gradually so that safety-net hospitals have more time to prepare. The Commission also urged Congress to change the formula for distributing the DSH cuts so that states with a higher number of low-income residents receive lower cuts. MACPAC argues that using the number of low-income residents instead of the uninsured rate would avoid penalizing Medicaid expansion states. Similarly, House Speaker Nancy Pelosi recently [stated](#) that: “We must take action to ease the upcoming Medicaid DSH cuts.” While she did not support changes to the DSH formula, she encouraged hospitals to help Congress find solutions to the “DSH challenges.”

## Changes to the DSH Formula

Senators Chuck Grassley and Marco Rubio have been the most [outspoken](#) on the need to change the DSH formula. Rubio [released](#) a discussion draft last year proposing to base a state's DSH payments on its national share of adults living below the federal poverty level. DSH allotments were capped by Congress in 1992, resulting in some states, like Florida, receiving less DSH payments despite having a larger uninsured population than other states. Senator Chuck Grassley also [stated](#) that: "We need a reality check on the outdated DSH formulas that don't adequately serve 21<sup>st</sup> century providers." While he didn't propose a specific solution, he noted this is on the Senate Finance Committee's agenda.

## Advocacy to Delay the DSH Cuts

Representatives Eliot Engel and Pete Olson, both members of the Committee on Energy and Commerce, are circulating a [bipartisan letter](#) to colleagues calling for a two-year delay of the \$4 billion DSH cut. They plan to collect signatures in support of such delay through May 3<sup>rd</sup>. The American Hospital Association (AHA), the Association of American Medical Colleges (AAMC) and six other health care groups are helping coordinate this advocacy effort. While it remains uncertain whether the DSH cuts will take place, Congress will likely continue exploring changes to the program.



## Update Around Site Neutral Payments

A [recent study](#) by the American Hospital Association (AHA) found that off-campus Provider Based Departments (PBDs) see poorer and sicker Medicare beneficiaries than Ambulatory Surgical Centers (ASCs). This study may indicate that the AHA is gearing up to oppose potential site-neutral payment policies. The AHA also [filed a lawsuit](#) last year challenging previous payment cuts for grandfathered PBDs, arguing that CMS is overstepping its statutory authority. However, the Trump Administration and policy think tanks are [strongly supporting](#) site-neutral policies because they believe they would be an effective mechanism to cut health care costs. Below is an update on the events occurring that reveal the AHA is in for a fight.

Both HHS Secretary Alex Azar and President Trump have expressed their support for site neutral payment policies. Azar [stated last year](#) that: "Fixing this perverse situation has been talked about for

years, by administrations of both parties – and yet this administration is the one finally bold enough to do it.” More recently, the President’s proposed [2020 budget](#) also recommended extending the payment cuts to on-campus PBDs. Several policy think tanks have also supported these [policies noting](#) that CMS’ cuts to PBDs were a positive step to increasing competition and lowering Medicare costs. The AHA will likely continue to push against these policies but due to the Administration’s interest on site-neutral payments, action is expected to occur soon.



### **Takeaways from the Senate’s PBM Hearing**

Last week, the Senate Finance Committee continued its series of hearings on drug pricing. Senators questioned five executives from the top Pharmacy Benefit Managers (PBMs) in the United States. These companies included Cigna, CVS Caremark, Optum Rx, Humana and Prime Therapeutics. Many believe that the hospital industry’s prices could soon face the same congressional scrutiny as the pharmaceutical industry. [READ MORE](#) to learn the key takeaways from the hearing.

#### **What is a PBM?**

The definition of a PBM was seemingly unclear to some of the legislators and consumers alike. Many believe the puzzling definition is the result of a negative public relations campaign largely funded by leaders in the pharmaceutical industry over the past year. The advertisements were intended to redirect consumers’ negative opinions away from pharma. This passing of the buck emboldened the Senators to pin down a concrete definition of a [PBM](#).

#### **Price Transparency and Business Practices**

Senators pointed to the lack of transparency in the PBM negotiation process as a top concern. The PBM executives pushed back, pointing fingers at pharma and suggesting more competition in the drug market will make the most difference in list prices. The concept of [spread pricing](#) was also brought up during the hearing, with Senator Wyden questioning executives as to whether their companies practice the business method.

#### **What’s Next?**

Republican Senator Grassley stated that the Committee had no immediate plans to call other elements of the supply chain to testify on Capitol Hill. However, the Senator did allude to working on legislation that

would increase transparency. Democratic Senator Wyden ended the hearing by asking the five executives whether they would support a law banning spread pricing in Medicare and Medicaid. Three of the five executives agreed to support such a measure and Cigna signaled support with the condition that the ban would have to be the industry standard. The executive from Optum Rx remained neutral on the idea.



### **Medicare Advantage Final Rule Released**

Last week, CMS finalized its Medicare Advantage (MA) [final rules](#) for CY 2020. Moves in the MA space offer a peek into CMS' interests, as they often use MA plans to explore innovative ideas for promoting health and wellness. In this latest rule, CMS seeks to expand telemedicine and encourage more wholistic health improvement benefits, like nutrition classes. Below are highlights from the final rule, which takes effect on January 1<sup>st</sup>.

#### **Medicare Advantage Plans**

- **Permit MA plans to offer additional telehealth benefits within basic benefits packages.** Telehealth benefits will now be able to be categorized as basic benefits instead of only supplemental. This will allow MA plans to broaden their provider networks and, hopefully, lower costs. CMS Administrator Verma hopes these [new telehealth benefits](#) enable MA enrollees “to access the latest technology and have greater access to telehealth.”
- **Allow MA plans to offer broadened supplemental benefit packages to chronically ill enrollees for improving health and function.** Supplemental benefits may include (but are not limited to) meal delivery, cooking classes, transportation for grocery shopping and the addition of wheelchair ramps to the home. The benefits would also apply to individuals with degenerative conditions.
- **Continued tweaks to the Medicare preclusion list requirements.** CMS has declined the request to delay the effective date of the [preclusion list](#), which logs providers whose Medicare enrollment has been suspended or revoked. CMS will make minor modifications to the list's appeals process and require beneficiary notification when a provider is included in the preclusion list.

## Medicare Advantage Star Ratings

- **Modify the MA CY2020 Star Ratings to increase statistical reliability and reduce outliers.** Specifications have been updated for three measures: Controlling High Blood Pressure, Medicare Plan Finder Price Accuracy and Plan All-Cause Readmissions. CMS will also now account for hurricanes and other natural disasters in the Star Ratings calculations.



## A Look at the Federal Register

**Building Evidence on Employment Strategies for Low-Income Families (BEES).** HHS is seeking comments on [proposed data collection](#) for a study. The purpose of BEES is to evaluate the effectiveness of a broad range of innovative programs designed to boost employment and earnings among low-income Americans. Within this general focus area, ACF has a particular interest in programs that serve adults whose employment prospects have been affected by Substance Use Disorder (SUD), Opioid Use Disorder (OUD), mental health conditions and justice involvement. Comments are due May 8<sup>th</sup>.

**Proposed Fiscal Year 2020 Payment and Policy Changes for Medicare Inpatient Rehabilitation Facilities (IRF).** CMS [proposes](#) to increase IRF payments by 2.3% (\$195 million) for FY 2020. Among other proposals, the rule seeks comments on new standardized patient assessment data elements to assess cognitive function and mental status, special services, treatments and interventions, medical conditions and comorbidities, impairments and social determinants of health. Comments are due June 17<sup>th</sup>.

**On the Horizon: The Proposed Inpatient Payment Rule.** We're expecting the FY 2020 IPPS proposed rule soon, perhaps as early as next week.

## IN OTHER NEWS

[Sen. Grassley: Stop Kicking Medicaid's Safety Net Hospital Payments Down the Road](#) – STAT

[Tool: Status of State Action on the Medicaid Expansion Decision](#) – KFF

[UnitedHealthcare, AMA Unveil More Medical Codes for Social Determinants](#) – Modern Healthcare

[Why States Want Certain Americans to Work for Medicaid](#) – The Atlantic

[FDA to Expand Opioid Labeling with Instructions on Proper Tapering](#) – The Hospitalist

[House Democrats to Release “Medicare for All” Bill—Without A Price Tag](#) – Politico

[Barr’s Confusing Testimony about Trump’s Latest Push to Overturn the ACA, Decoded](#) – Vox