

111TH CONGRESS  
2D SESSION

# S. 2984

To direct the Secretary of Health and Human Services to revise regulations implementing the statutory reporting and auditing requirements for the Medicaid disproportionate share hospital (“DSH”) payment program to be consistent with the scope of the statutory provisions and avoid substantive changes to preexisting DSH policy.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2010

Ms. LANDRIEU (for herself and Mr. VITTER) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To direct the Secretary of Health and Human Services to revise regulations implementing the statutory reporting and auditing requirements for the Medicaid disproportionate share hospital (“DSH”) payment program to be consistent with the scope of the statutory provisions and avoid substantive changes to preexisting DSH policy.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Medicaid DSH Integrity Act”.

6       (b) FINDINGS.—Congress finds the following:

1           (1) Medicaid disproportionate share hospital  
2           (“DSH”) payments are a critical source of funding  
3           for many safety net hospitals that provide essential  
4           access to care for the poor and uninsured.

5           (2) The statutory reporting and auditing re-  
6           quirements added by the Medicare Prescription  
7           Drug Improvement and Modernization Act of 2003  
8           are important to provide assurances to Congress, the  
9           Department of Health and Human Services, States  
10          and the public that DSH funds are being used to  
11          fulfill their intended statutory purpose of assisting  
12          hospitals that serve a disproportionate share of low-  
13          income individuals.

14          (3) The Centers for Medicare & Medicaid Serv-  
15          ices issued Medicaid DSH auditing and reporting  
16          regulations (as defined in section 2(d)) that, in im-  
17          plementing those reporting and auditing require-  
18          ments, also implemented changes to underlying DSH  
19          policy which have the effect of narrowing the scope  
20          of DSH payments that may be made for many  
21          States.

22          (4) In adding those reporting and auditing re-  
23          quirements, Congress did not intend to alter the def-  
24          inition of DSH-eligible costs or to narrow the scope  
25          of DSH payments that may be made under the ex-

1       isting DSH program and the substantive standards  
 2       in section 1923(g) of the Social Security Act (42  
 3       U.S.C. 1396r-4(g)).

4           (5) The policy changes in such regulations  
 5       would result in DSH payment reductions of millions  
 6       of dollars to critical safety net providers that have  
 7       long participated in the Medicaid DSH program  
 8       under payment methodologies previously approved  
 9       by CMS.

10   **SEC. 2. REVISION OF MEDICAID DSH AUDITING AND RE-**  
 11                   **PORTING REGULATIONS.**

12       (a) IN GENERAL.—Not later than 60 days after the  
 13       date of enactment of this Act, the Secretary of Health and  
 14       Human Services, in consultation with States and dis-  
 15       proportionate share hospitals (as determined for purposes  
 16       of the Medicaid DSH program), shall—

17           (1) indicate, in appropriate guidance, that CMS  
 18       does not intend to enforce any changes in policy re-  
 19       lated to the calculation of the limits under section  
 20       1923(g)(1)(A) of the Social Security Act that were  
 21       contained in the Medicaid DSH auditing and report-  
 22       ing regulations; and

23           (2) publish an interim final rule to revise the  
 24       Medicaid DSH auditing and reporting regulations at

sections 447.299(c) and 455.304 of title 42, Code of Federal Regulations, as necessary—

(A) to correct policy changes related to the calculation of the limits under section 1923(g)(1)(A) of the Social Security Act;

(B) to provide appropriate guidance for otherwise implementing the Medicaid DSH auditing and reporting regulations; and

(C) to provide for the regulatory changes described in subsection (b).

(b) REGULATORY CHANGES TO BE INCLUDED IN NEW INTERIM FINAL RULE.—The regulatory changes described in this subsection are the following:

(1) In defining the costs of furnishing services to individuals with no health insurance (or other source of third-party coverage), CMS shall permit inclusion of all costs related to services provided to patients with no insurance for the service rendered, even if the patient has insurance that covers other services. The receipt by a hospital of nominal payments related to a service shall not constitute health insurance or a source of third-party coverage.

(2) Consistent with prior guidance of CMS contained in a letter to State Medicaid directors on August 17, 1994, CMS shall permit States to use the

1 definition of allowable costs in its State Medicaid  
2 plan, or any other definition, in computing such  
3 costs as long as the costs determined under such a  
4 definition do not exceed the amounts that would be  
5 allowable under the Medicare principles of cost reim-  
6 bursement. CMS shall interpret the language of the  
7 audit requirement at section 1923(j)(2)(C) of the  
8 Social Security Act describing “inpatient hospital  
9 and outpatient hospital services” to be consistent  
10 with the term “hospital services” as used in section  
11 1923(g)(1)(A) of such Act and not to indicate an in-  
12 tent by Congress for a more restrictive interpreta-  
13 tion of such section 1923(g)(1)(A).

14 (3) CMS shall, as appropriate, revise the Gen-  
15 eral DSH Audit and Reporting Protocol referenced  
16 in the Medicaid DSH auditing and reporting regula-  
17 tions and issued at the same time as those regula-  
18 tions, in particular, to permit the use of either an  
19 overall cost-to-charge ratio or departmental cost-to-  
20 charge ratios.

21 (4) CMS shall revise section 455.304(d)(2) of  
22 title 42, Code of Federal Regulations, to permit al-  
23 ternative methodologies for determining actual costs,  
24 including through trending forward costs from prior  
25 years.

1 (c) INITIATION OF REQUIREMENTS.—

2 (1) IN GENERAL.—Section 1923(j) of the Social  
3 Security Act (42 U.S.C. 1396r–4(j)) is amended by  
4 striking “2004” and inserting “2008”.

5 (2) EFFECTIVE DATE.—The amendment made  
6 by paragraph (1) shall be effective as if included in  
7 the enactment of the Medicare Prescription Drug,  
8 Improvement, and Modernization Act of 2003 (Pub-  
9 lic Law 108–173).

10 (d) DEFINITIONS.—In this Act:

11 (1) The term “CMS” means the Centers for  
12 Medicare & Medicaid Services.

13 (2) The term “Medicaid DSH auditing and re-  
14 porting regulations” means the final regulation  
15 issued on December 19, 2008, and published begin-  
16 ning at 73 Federal Register 77904.

17 (3) The term “Medicaid DSH program” means  
18 the program of payment adjustments under section  
19 1923 of the Social Security Act (42 U.S.C. 1396r–  
20 4).

21 (4) The term “Secretary” means the Secretary  
22 of Health and Human Services, acting through  
23 CMS.

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