



# Oversight of UPL Payments

## Additional Analyses and Policy Options



**Medicaid and CHIP Payment and Access Commission**

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# Overview

- Background on upper payment limit (UPL) rules
- Review of hospital-specific UPL demonstrations
  - Data completeness
  - UPL compliance
  - Methods for calculating Medicare payment estimate
- Barriers to improving UPL reporting and compliance
- Policy options

# UPL Background

- The UPL is an upper limit on aggregate FFS payments for a class of providers
  - The UPL is based on a reasonable estimate of what Medicare would have paid for the same services
  - If base payments are below the UPL, states can make UPL supplemental payments to make up the difference
- States make UPL payments to hospitals, nursing facilities, physicians, and other providers

# UPL Demonstrations

- In 2013, CMS issued guidance requiring states to demonstrate compliance with UPL requirements annually
- States submit hospital-specific data to CMS in a standard format
  - Medicaid FFS base and supplemental payments
  - Estimates of what would have been paid according to Medicare payment principles
  - Some hospitals paid on a cost basis, such as critical access hospitals, are not included
- MACPAC obtained hospital-level data for SFY 2016 for 47 states and the District of Columbia

# Data Completeness

- Missing payments
  - 10 states did not report inpatient hospital UPL payments and 11 states did not report outpatient UPL payments
  - Many states submit UPL demonstrations prospectively, before they finalize payments for the year under review
- Missing hospitals
  - Half of states reported data for fewer than the number of hospitals in their state
  - CMS does not require states to submit information on hospitals paid on a cost-basis, but this does not account for all of the discrepancy

# Comparison with Actual Spending

- We compared projected spending reported on state UPL demonstrations to actual spending reported on CMS-64 expenditure reports
  - Aligned fiscal years and accounted for prior period adjustments to make data more comparable
  - UPL demonstration data are based on date of service and expenditure reports are based on date of payment
  - UPL demonstrations exclude cross-over claims for patients dually eligible for Medicare and Medicaid (\$2.2 billion for hospital services in 2013)
- Actual spending exceeded UPL demonstration projections in most states

# Spending Reported on UPL Demonstrations and Expenditure Reports, SFY 2016 (billions)

| Type of service                       | Type of payment | Reported on UPL demonstrations | Actual spending | Difference  |
|---------------------------------------|-----------------|--------------------------------|-----------------|-------------|
| Inpatient                             | Base            | \$24.2                         | \$28.3          | \$4.1       |
|                                       | Supplemental    | 6.1                            | 11.5            | 5.5         |
| Outpatient                            | Base            | 9.3                            | 9.2             | -0.1        |
|                                       | Supplemental    | 2.4                            | 3.7             | 1.3         |
| <b>Total inpatient and outpatient</b> |                 | <b>42.0</b>                    | <b>52.8</b>     | <b>10.8</b> |

**Notes:** SFY is state fiscal year. UPL is upper payment limit. Analysis limited to states that submitted hospital-specific UPL demonstrations and excludes Arizona, New York, and Tennessee. CMS-64 spending is adjusted to account for prior period adjustments. Supplemental payments subject to the UPL include UPL supplemental payments and graduate medical education (GME) payments but exclude disproportionate share hospital (DSH) payments. Totals do not sum due to rounding.

**Source:** MACPAC analysis of hospital-specific UPL demonstrations and CMS financial management reports  
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# UPL Compliance

- 16 states reported UPL spending on CMS-64 expenditure reports that exceeded the UPL gap calculated on their UPL demonstrations
  - 12 states exceeded their inpatient UPL by \$1.4 billion in the aggregate
  - 6 states exceeded their outpatient UPL by \$65 million in the aggregate
- 27 states reported total FFS spending that exceeded their UPL
  - If we assume that increased base payment spending would increase the UPL, then 12 states would have exceeded their adjusted UPL



# Methods for Calculating the UPL

- CMS allows states to use one of four methods for estimating what Medicare would have paid
  - Cost-based
  - Payment-to-charge-based
  - Price-based
  - Per diem
- In SFY 2016, about half of states used a cost-based method for inpatient hospital UPLs, and most used a cost-based method for outpatient UPLs
- Under a cost-based method, states can increase their UPL to account for the costs of provider taxes

# Barriers to Improving UPL Reporting and Compliance

- We spoke with CMS staff and state officials in three states about barriers to improving UPL reporting and compliance
- Common challenges include
  - Different reporting processes for tracking claims in Medicaid management information systems (MMIS) and Medicaid payments on the CMS-64 report
  - Confusion about UPL requirements
  - The lack of a process to certify state UPL demonstrations

# Policy Options

- Monitor actual UPL supplemental payment spending relative to the UPL gap calculated by states
- Review compliance with UPL requirements retrospectively using actual payment data
- Calculate the UPL based on current Medicare payment methods

# Next Steps

- Commission feedback will help staff further develop and analyze policy options
  - Which policy options that Commissioners are most interested in developing further?
  - Are other policy options that we should consider?
  - What additional information would help inform decision making?
- Staff can prepare specific recommendation language for a vote later this fall



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