



Accounting for Third-Party Payments in the DSH Definition of Medicaid Shortfall

—
Medicaid and CHIP Payment and Access Commission

Robert Nelb

Overview

- Background on Medicaid patients with third-party coverage
- History of the disproportionate share hospital (DSH) definition of Medicaid shortfall
- State and provider effects of recent court ruling
- Policy approaches
- Next steps

Background

- Individuals can be eligible for Medicaid even if they have other insurance
- Medicaid is generally the payer of last resort
 - Medicare is the primary payer for hospital services for patients dually eligible for Medicare and Medicaid
 - Hospitals may not receive payments from Medicaid for Medicaid patients with private insurance if the private payment exceeds what Medicaid would pay
- In 2017, 18.4 million Medicaid enrollees had third-party coverage

Hospital-Specific DSH Limit

- DSH payments to an individual hospital cannot exceed a hospital's uncompensated care costs for Medicaid and uninsured patients
- Medicaid shortfall is the difference between
 - the cost of providing care to Medicaid-eligible patients, and
 - payments received for those services
- For patients with third-party coverage, hospitals receive payments from both Medicaid and other payers

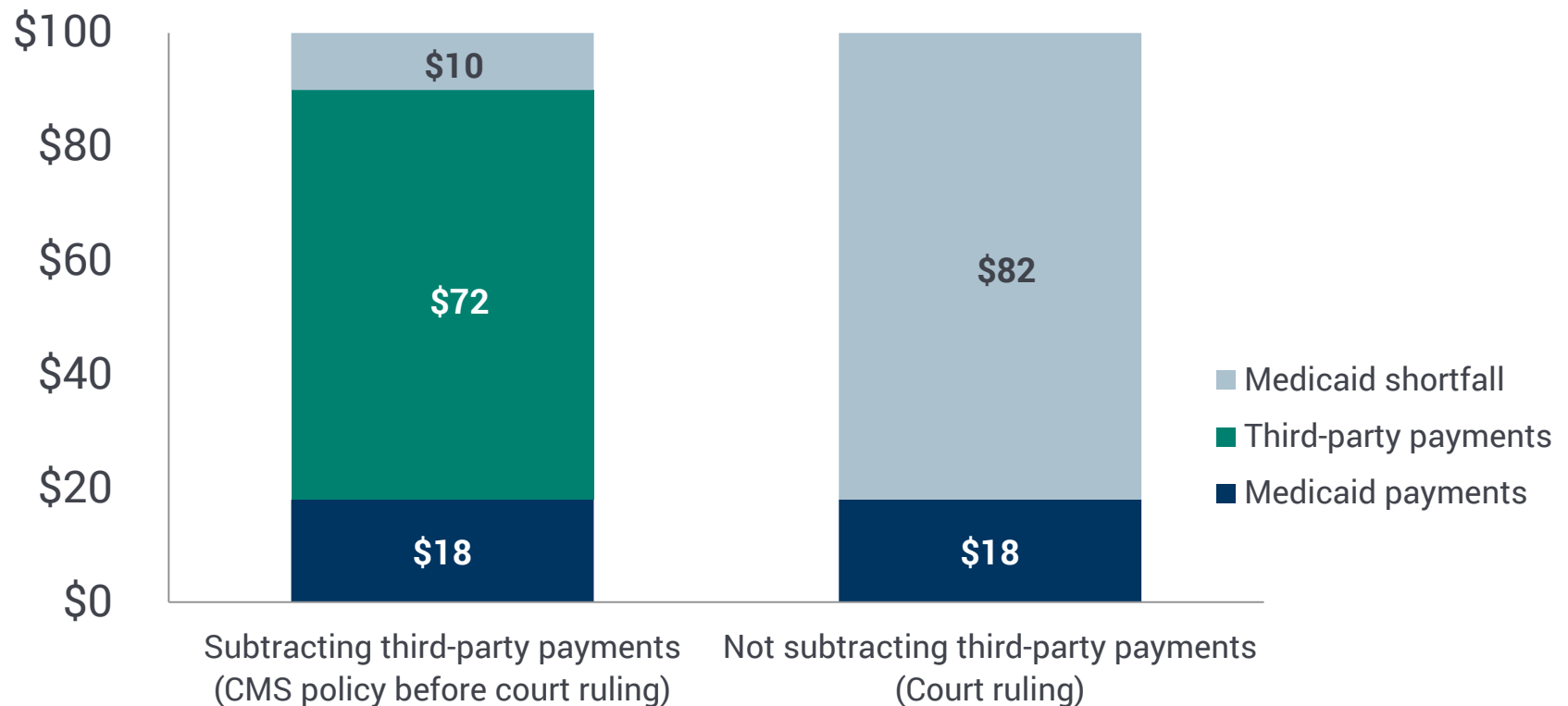
History of DSH Definition of Medicaid Shortfall

- **1993:** Hospital-specific limit established
- **2003:** States required to audit hospital costs
- **2008:** CMS finalizes DSH audit rule
- **2010:** CMS issues sub-regulatory guidance clarifying that third-party payments should be subtracted in the shortfall calculation
- **2011:** CMS begins enforcing DSH audit rule
- **2017:** Final rule about third-party payments
- **2018:** Court ruling that third-party payments cannot be subtracted in the shortfall calculation

Effects of Court Ruling

- No change to state DSH allotments
- The total amount of Medicaid shortfall reported will increase since third-party payments are no longer being subtracted
 - Patients dually eligible for Medicare and Medicaid will account for most of the increase
 - Children's hospitals will also be particularly affected

Illustrative Example of Medicaid Shortfall Under Different Methods of Accounting for Third-Party Payments



Note: Court ruling is the policy described in *Children's Hospital Association of Texas v. Azar*, No. 17-844 (D.DC 2018 March 2, 2018), appeal docketed, No. 18-5135 (D.C. Cir. May 9, 2018)

State and Provider Effects

- States with unspent DSH funds may spend more of their DSH allotment
- The distribution of DSH payments may change in some states
 - In 2016, 24 states distributed DSH payments based on hospital uncompensated care as defined on DSH audits
 - In these states, DSH funding will shift to hospitals that serve more Medicaid patients with third-party coverage if state policies do not change
 - States are not required to use the new DSH audit definition of uncompensated care to target DSH payments

Policy Considerations

- Not subtracting third-party payments will allow hospitals to effectively receive duplicate payments for care that is already compensated
- Different types of third-party payments may require special consideration
 - Medicare is another public program and also makes DSH payments to hospitals that serve a high share of low-income patients
 - Payments from private insurers often exceed hospital costs

Policy Approaches

- Potential alternatives to the court ruling include:
 - Including payments from third-party payers in the DSH definition of Medicaid shortfall
 - Excluding payments and costs for patients with third-party coverage from the DSH definition of Medicaid shortfall entirely
 - Developing different rules for different types of third-party coverage situations

Next Steps

- Based on Commissioner interest, staff can further develop particular policy options for consideration at the March or April public meeting in order to include a recommendation on this issue in the June 2019 report



Accounting for Third-Party Payments in the DSH Definition of Medicaid Shortfall

—
Medicaid and CHIP Payment and Access Commission

Robert Nelb