

**REVISED PROPOSED REGULATION OF THE  
DIVISION OF HEALTH CARE FINANCING AND POLICY  
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**LCB File No. R086-13**

March 6, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-9, NRS 422.390.

A REGULATION relating to health care financing; providing that disproportionate share payments to hospitals must not exceed certain costs; revising the definition of public hospital; amending the manner in which disproportionate share payments to hospitals are to be calculated and distributed; and providing other matters properly relating thereto.

**Section 1.** Chapter 422 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

**Sec. 2.**     *“Disproportionate share payment” has the meaning ascribed to it in NRS 422.380.*

**Sec. 3.**     **1.**     *Disproportionate share payments will be distributed as follows:*

**(a)**     *Fifty percent of the amount allocated to a pool pursuant to NAC 422.115 will be distributed based on the uncompensated care percentage of the hospital, which is determined by dividing uncompensated care costs of the hospital by the net patient revenues of the hospital; and*

**(b)**     *Fifty percent of the amount allocated to the pool will be distributed based on the percentage of total uncompensated care costs of the hospital, which is determined by dividing the uncompensated care costs of a hospital by the aggregate total uncompensated care costs of*

*all hospitals within the pool of hospitals in which the hospital is placed pursuant to NAC 422.115.*

*2. For the purposes of this section, the Division will determine “net patient revenues” by subtracting contracted allowances and discounts from the total patient revenues of a hospital.*

**Sec. 4.** NAC 422.015 is hereby amended to read as follows:

422.015 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC ~~422.025~~ **422.035** to 422.075, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

**Sec. 5.** NAC 422.065 is hereby amended to read as follows:

422.065 “Public hospital” means:

1. A hospital owned ~~by a state~~ or ~~local government,~~ *operated by this State or a political subdivision of this State*, including, without limitation, a hospital district; or
2. A hospital that is supported in whole or in part by tax revenue ~~+~~ *collected in this State*, other than tax revenue received *by a hospital* for medical care which is provided to Medicaid patients, indigent patients or other low-income patients.

**Sec. 6.** NAC 422.115 is hereby amended to read as follows:

422.115 1. Except as otherwise provided in subsection 2, the Division will initially distribute for:

(a) Pool A, which consists of all public hospitals in counties whose population is ~~400,000~~ **700,000** or more, total annual disproportionate share payments in the amount of ~~66,650,000~~ **plus 90 percent of the total amount of disproportionate share payments distributed by the State in that fiscal year which exceeds \$76,000,000;** *87.97 percent of the total computable disproportionate share hospital allotment for the fiscal year;*

(b) Pool B, which consists of all private hospitals in counties whose population is ~~{400,000}~~ **700,000** or more, total annual disproportionate share payments in the amount of ~~{1,200,000 plus 2.5 percent of the total amount of disproportionate share payments distributed by the State in that fiscal year which exceeds \$76,000,000;}~~ **1.69 percent of the total computable disproportionate share hospital allotment for the fiscal year;**

(c) Pool C, which consists of all private hospitals in counties whose population is 100,000 or more but less than ~~{400,000;}~~ **700,000**, total annual disproportionate share payments in the amount of ~~{4,800,000 plus 2.5 percent of the total amount of disproportionate share payments distributed by the State in that fiscal year which exceeds \$76,000,000;}~~ **5.86 percent of the total computable disproportionate share hospital allotment for the fiscal year;**

(d) Pool D, which consists of all public hospitals in counties whose population is less than 100,000, total annual disproportionate share payments in the amount of ~~{900,000 plus 2.5 percent of the total amount of disproportionate share payments distributed by the State in that fiscal year which exceeds \$76,000,000;}~~ **1.34 percent of the total computable disproportionate share hospital allotment for the fiscal year;** and

(e) Pool E, which consists of all private hospitals in counties whose population is less than 100,000, total annual disproportionate share payments in the amount of ~~{2,450,000 plus 2.5 percent of the total amount of disproportionate share payments distributed by the State in that fiscal year which exceeds \$76,000,000.}~~ **3.14 percent of the total computable disproportionate share hospital allotment for the fiscal year.**

2. A hospital may not receive a disproportionate share payment unless the hospital meets all the requirements:

(a) Established by federal and state statutes and regulations; and

(b) As prescribed in the State Plan for Medicaid.

*3. A hospital is not entitled to receive a disproportionate share payment greater than its uncompensated care costs.*

*4. For the purposes of this section, the Division will calculate the “total computable disproportionate share hospital allotment” by dividing the amount allocated to this State pursuant to 42 U.S.C. § 1396r-4(f) by the federal medical assistance percentage for the current year calculated pursuant to 42 U.S.C. § 1396d(b).*

**Sec. 7.** NAC 422.135 is hereby amended to read as follows:

422.135 ~~{1. Except as otherwise provided in subsection 2, the}~~ *The* Division will make an initial distribution of disproportionate share payments to a hospital ~~{by dividing the distribution factor for that hospital by the pool distribution factor and multiplying the result by the total amount of money available for initial distribution to the pool of hospitals pursuant to NAC 422.115.~~

~~—2. The Division will adjust the initial distribution for each hospital in a pool of hospitals to ensure that each hospital which is eligible to receive a disproportionate share payment receives not less than \$10,000.}~~ *determined in the manner described in section 3 of this regulation and using the data reported on the report filed by the hospital pursuant to subsection 1 of NAC 439B.230.*

**Sec. 8.** NAC 422.155 is hereby amended to read as follows:

422.155 1. ~~{After conducting}~~ *If the Division determines, based on* an audit *conducted* pursuant to NAC 422.145, *that a hospital’s initial disproportionate share payment exceeds the amount that the hospital was entitled to receive,* the Division will recalculate, based upon the results of the audit, *for each hospital in the affected pool,* the:

- (a) Uncompensated care costs ; ~~{for each hospital in this State;}~~
- (b) ~~{Distribution factor for each hospital and each pool of hospitals; and}~~ *Uncompensated care percentages, determined in the manner described in paragraph (a) of subsection 1 of section 3 of this regulation; and*
- (c) Disproportionate share payments ~~{for each hospital by dividing the recalculated distribution factor for that hospital by the pool distribution factor and multiplying the result by the total amount of money available for final distribution to the pool of hospitals pursuant to NAC 422.115.}~~ *using the amounts recalculated pursuant to paragraphs (a) and (b) and determined in the manner described in section 3 of this regulation.*

2. A hospital may receive as a final distribution of disproportionate share payments for a fiscal year an amount equal to:

- (a) The uncompensated care costs calculated pursuant to paragraph (a) of subsection 1; or
  - (b) The disproportionate share payment for the hospital calculated pursuant to paragraph (c) of subsection 1,
- ↪ whichever is less.

3. If the amount of the final distribution payment calculated pursuant to subsection 2 is ~~{less}~~ :

*(a) Less* than the amount of the initial distribution of disproportionate share payments received by the hospital pursuant to NAC 422.135, the hospital shall return to the Division *by check or an electronic transfer of money* the difference between the amount of the initial distribution and the amount of the final distribution ~~{}~~ *not later than 90 days after the date on which the hospital receives written notification of the overpayment.*

*(b) Greater than the amount of the initial distribution of disproportionate share payments received by the hospital pursuant to NAC 422.135, the Division will pay to the hospital the difference between the amount of the final distribution payment and the initial distribution.*

~~4. Except as otherwise provided in subsection 5, the Division will, for each pool of hospitals, redistribute among the hospitals within the pool the money returned to the Division pursuant to subsection 3 by the hospitals within that pool.~~

~~—5.†~~ If each hospital within a pool of hospitals has received the maximum amount of disproportionate share payments allowable by federal and state statutes and regulations, the Division will use the money returned pursuant to *paragraph (a) of* subsection 3 to pay additional disproportionate share payments as follows:

(a) If the money was returned by a hospital that is a member of Pool A, to hospitals in Pool B;

(b) If the money was returned by a hospital that is a member of Pool B, to hospitals in Pool C;

(c) If the money was returned by a hospital that is a member of Pool C, to hospitals in Pool D;

(d) If the money was returned by a hospital that is a member of Pool D, to hospitals in Pool E; or

(e) If the money was returned by a hospital that is a member of Pool E, to hospitals in Pool ~~D;~~

~~→ or, if each hospital in a pool of hospitals to which additional payments would have been paid pursuant to this subsection has received the maximum allowable disproportionate share payments, to such other pool of hospitals as the Division determines appropriate.] A.~~

5. *As used in this section, “electronic transfer of money” means any transfer of money, other than a transaction initiated by a check or other similar instrument, that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing or authorizing a financial institution to debit or credit an account.*

Sec. 9. NAC 422.025, 422.045 and 422.125 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**422.025 “Distribution factor” defined. (NRS 422.390)** “Distribution factor” means the value of the formula set forth in NAC 422.125 calculated for a hospital.

**422.045 “Pool distribution factor” defined. (NRS 422.390)** “Pool distribution factor” means the sum of each distribution factor for each hospital that is a member of the pool of hospitals for which a disproportionate share payment is being calculated.

**422.125 Formula for Division to calculate distribution factor for hospitals. (NRS 422.390)**

1. The Division will use the following formula to calculate the distribution factor for a hospital:

$$DF = \frac{UCC \times (UCPH)^4}{UCPP}$$

where:

DF is the distribution factor.

UCC is the uncompensated care costs of the hospital.

UCPH is the uncompensated care percentage of the hospital.

UCPP is the uncompensated care percentage of the pool of hospitals of which the hospital is a designated member.

2. As used in this section:

(a) “Uncompensated care percentage of the hospital” means the uncompensated care costs of a hospital divided by the net patient revenues of the hospital, as reported on the report filed pursuant to subsection 1 of NAC 439B.230.

(b) “Uncompensated care percentage of the pool of hospitals” means the sum of the uncompensated care costs for all hospitals in the pool divided by the sum of the net patient revenues of all hospitals in the pool, as reported on the reports filed pursuant to subsection 1 of NAC 439B.230 for each such hospital.