

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

**LCB File No. R086-13**

Effective December 22, 2014

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

AUTHORITY: §§1-10, NRS 422.390.

A REGULATION relating to hospitals; revising provisions governing the calculation and distribution of disproportionate share payments to certain hospitals that serve a disproportionate number of Medicaid and low-income patients; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Federal law provides for the allocation of federal funds to states to distribute to certain hospitals that are used by a high number of Medicaid and low-income patients. The payments made to hospitals are known as disproportionate share payments. (42 U.S.C. § 1396r-4) Existing Nevada law requires the Division of Health Care Financing and Policy of the Department of Health and Human Services to adopt regulations concerning: (1) the calculation of disproportionate share payments; (2) procedures and requirements for conducting independent and certified audits of hospitals and the disproportionate share payments made to hospitals; (3) procedures for adjusting a disproportionate share payment if, according to the audit, the amount paid to the hospital was greater than the amount the hospital was eligible to receive; and (4) procedures for redistributing any disproportionate share payment returned to the Division. (NRS 422.390)

**Section 3** of this regulation requires certain hospitals to complete and submit to the Division certain documentation relating to the calculation and distribution of disproportionate share payments.

**Section 5** of this regulation revises the definition of “public hospital” for the purposes of calculating and distributing disproportionate share payments. As revised, the term includes only hospitals that are owned or operated by this State or a political subdivision of this State or supported in whole or in part by tax revenue collected in this State. Therefore, public hospitals in hospital districts which include counties in this State and also in a neighboring state will not receive disproportionate share payments from the Division unless they satisfy this definition.

Existing law requires the board of county commissioners of each county to remit a certain amount to the State Controller from the fund for medical assistance to indigent persons. (NRS 428.285) Existing regulations require a state or local government or other entity responsible for a public hospital in certain counties to transfer certain amounts of disproportionate share payments to the Division. Counties that make such a transfer are discharged of the duty and released from liability for providing medical treatment for certain indigent inpatients. (NAC 422.105) **Section 6** of this regulation provides that the amount remitted from the fund for medical assistance to indigent persons to the State Controller will be credited against the amount of disproportionate share payments that a county is required to transfer to the Division.

Existing regulations set forth methodology for: (1) the initial calculation and distribution of disproportionate share payments based on data provided by hospitals; and (2) recalculating and redistributing disproportionate share payments if an audit reveals that a hospital has received a larger initial disproportionate share payment than it was entitled to receive. (Chapter 422 of NAC) **Sections 7-9** of this regulation revise the manner in which the Division calculates and distributes disproportionate share payments. **Section 10** of this regulation repeals existing regulations relating to the calculation and distribution of disproportionate share payments that have been replaced in this regulation.

**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” means a payment made pursuant to 42 U.S.C. § 1396r-4.*

**Sec. 3. 1.** *On or before the dates prescribed by the Division pursuant to subsection 2:*  
*(a) Each hospital that is not solely a psychiatric hospital or other type of mental health facility shall complete and submit to the Division annually:*

*(1) A survey prescribed by the Division concerning obstetric services provided by the hospital; and*

*(2) A form prescribed by the Division concerning the Medicaid inpatient utilization rate of the hospital.*

*(b) Each hospital that qualifies as a disproportionate share hospital pursuant to 42 U.S.C. § 1396r-4 shall complete and submit to the Division annually:*

*(1) A form prescribed by the Division concerning the low-income utilization rate of the hospital; and*

*(2) A report of the uncompensated care costs of the hospital.*

*2. The Division will notify each hospital of the date on which the hospital must submit the documents required pursuant to subsection 1.*

*3. As used in this section:*

*(a) “Low-income utilization rate” has the meaning ascribed to it in 42 U.S.C. § 1396r-4(b)(3).*

*(b) “Medicaid inpatient utilization rate” has the meaning ascribed to it in 42 U.S.C. § 1396r-4(b)(2).*

*(c) “Psychiatric hospital” has the meaning ascribed to it in NRS 449.0165.*

**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 *or operated* by *this* ~~the~~ **State** or ~~local government,~~ *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 ~~that~~ **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 422.105 is hereby amended to read as follows:

422.105 1. In a county whose population is 100,000 or more within which a public hospital is located, the ~~state or local government or other entity~~ *State or political subdivision* responsible for the public hospital shall transfer to the Division an amount equal to:

(a) Seventy percent of the total amount of disproportionate share payments distributed to all hospitals pursuant to this chapter and NRS 422.380 to 422.390, inclusive, for the current fiscal year, less \$1,050,000; or

(b) Sixty-eight and fifty-four one hundredths percent of the total amount of disproportionate share payments distributed to all hospitals pursuant to this chapter and NRS 422.380 to 422.390, inclusive, for the current fiscal year,

↳ whichever is less.

2. In a county whose population is 100,000 or more within which a private hospital which receives a disproportionate share payment pursuant to paragraph (c) of subsection 1 of NAC 422.115 is located, the county shall transfer to the Division 1.95 percent of the total amount of disproportionate share payments distributed to all hospitals pursuant to this chapter and NRS 422.380 to 422.390, inclusive, for the current fiscal year, but not more than \$1,500,000.

3. If a county transfers to the Division the amount required pursuant to subsection 2, the county is discharged of the duty and is released from liability for providing medical treatment for indigent inpatients who are treated in the hospital in the county that receives a payment pursuant to paragraph (c) of subsection 1 of NAC 422.115.

*4. The amount remitted by the board of county commissioners of a county to the State Controller pursuant to subsection 3 of NRS 428.285 will be credited toward any amount which the State or political subdivision of this State, as applicable, is required to transfer to the Division pursuant to subsection 1 or 2 of this section.*

Sec. 7. 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 supplemental payments 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 supplemental payments 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 supplemental payments 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 supplemental payments 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 ~~1~~~~\$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 supplemental payments 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 that is greater than the amount of its uncompensated care costs.*

*4. The Division will calculate the total computable disproportionate share supplemental payments 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 determined pursuant to 42 U.S.C. § 1396d(b).*

**Sec. 8.** NAC 422.135 is hereby amended to read as follows:

422.135 1. ~~{Except as otherwise provided in subsection 2, the}~~ *The Division will distribute disproportionate share payments as follows:*

*(a) Fifty percent of the amount allocated to a pool pursuant to NAC 422.115 will be distributed among hospitals in that pool in an amount corresponding to 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. The net patient revenues of a hospital will be determined by subtracting any contracted allowances and discounts reported on the*

*Medicare Cost Report filed by the hospital pursuant to subsection 1 of NAC 439B.230 from the total patient revenues of the hospital.*

*(b) Fifty percent of the amount allocated to a pool pursuant to NAC 422.115 will be distributed among hospitals in that pool in an amount corresponding to the percentage of total uncompensated care costs of each 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. *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.~~ in an amount determined in the manner described in subsection 1 and using the data reported on the Medicare Cost Report filed by the hospital pursuant to subsection 1 of NAC 439B.230.*

Sec. 9. 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;~~ *Uncompensated care percentages, determined in the manner described in paragraph (a) of subsection 1 of NAC 422.135;* and

(c) ~~Disproportionate~~ *Final 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 NAC 422.135.~~

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 *final* disproportionate share payment for the hospital calculated pursuant to paragraph (c) of subsection 1,

↪ whichever is less.

3. *For each pool that includes a hospital for which the Division has determined pursuant to subsection 1 that the initial disproportionate share payment exceeded the amount that the hospital was entitled to receive, the Division will notify each hospital in the pool whether the final distribution payment calculated pursuant to subsection 2 is less than or greater than the amount of the initial distribution of disproportionate share payments received by the hospital pursuant to NAC 422.135.* 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 the

difference between the amount of the initial distribution and the amount of the final distribution

~~f~~

~~—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.† 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, the Division will pay to the hospital the difference between the amount of the final distribution payment and the initial distribution.*

4. 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

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~~→ 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.]~~

**Sec. 10.** 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:

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

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.

**Legislative Review of Adopted Regulations as Required by NRS 233B.066  
Nevada Regulation Amendment R086-13**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 422, Nevada Regulation Amendment R086-13.

**1. A clear and concise explanation of the need for the adopted regulation.**

This NAC describes the program limits, eligibility and distribution of the Disproportionate Share Hospital (DSH) program. The methodology currently includes guaranteed dollar amounts. With the projected Federal annual allotment decrease due to ACA, the annual DSH allotments might be lower than the guaranteed dollar amounts, which might make the State out of compliance with the NAC. The amendment will update several elements of the calculation methodology to ensure compliance.

**2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices of workshop, Notices of Intent to Act Upon the Regulation were emailed to all persons on the agency's mailing list for administrative regulations and made available at the DHCFP Carson City central office, 1100 E. Williams Street, Suite 101, Carson City, NV 89701; Las Vegas DHCFP, 1210 E. Valley View Blvd. Suite 104, Las Vegas, NV 89416 and the DHCFP Web site [www.dhcfp.nv.us](http://www.dhcfp.nv.us). Copies were posted to all county libraries in Nevada and the Nevada State Library. The Notice of Public Hearing and the regulation to be amended were on file at the State Library and Public Library in addition the text of the proposed regulation were available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us> and <http://notice.nv.gov>, at 100 Stewart Street, Carson City, Nevada, for inspection by members of the public

On March 31, 2014 a Public Workshop was conducted via teleconference, in both Carson City and Las Vegas, at the Division of Health Care Financial and Policy (DHCFP) conference room. There was no testimony at the Workshop. The Public Workshop Minutes contain a summary of the discussion held regarding the proposed regulation and are attached.

On September 22<sup>nd</sup>, 2014 a Public Hearing was held, via teleconference, in Carson City at the State of Nevada Legislative Building and in Las Vegas at the Grant Sawyer Building. 3 people attended in Carson City, and 0 people in Las Vegas, in addition to DHCFP staff and Senior DAG Darrell Faircloth.

Additional information and minutes from the Public Workshop is available by contacting Silvia Giancontieri at [silvia.giancontieri@dhcfp.nv.gov](mailto:silvia.giancontieri@dhcfp.nv.gov).

Interested persons may obtain a copy of the Public Hearing minutes on the web at [www.dhcfp.nv.gov](http://www.dhcfp.nv.gov), Public Notices, Past Meeting Minutes, 2014, Nevada Administrative

Code, and then click on NAC PH Minutes 9-22-14.pdf or contact Rita Mackie at [rmackie@dncfp.nv.gov](mailto:rmackie@dncfp.nv.gov) or 775/684-3681.

**3. The Number persons who:**

- (a) **Attended each hearing:** March 31, 2014 - 4, September 22<sup>nd</sup>, 2014 - 9
- (b) **Testified at each hearing:** March 31, 2014 - 0 , September 22<sup>nd</sup>, 2014 - 0
- (c) **Submitted to the agency written comments:**

None

**4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting hearing:**

- (a) **Name;**
- (b) **Telephone number;**
- (c) **Business address;**
- (d) **Business telephone number;**
- (e) **Electronic mail address; and**
- (f) **Name of entity or organization represented.**

None

**5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public.

The summary may be obtained as instructed in the response to question #2.

**6. If the regulations was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

As there was no opposition expressed to the proposed legislation it was adopted without change.

**7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

**The economic effect of the regulation on the business which it is to regulate:**

- (a) **Both adverse and beneficial effects; and**  
DSH funding is based on an allotment set by the Federal Government.

Due to the anticipated decrease in DSH federal allotment, DHCFP expects a reduction in DSH supplemental payments to eligible hospitals.

**(b) Both immediate and long-term effects.**

DSH funding is based on an allotment set by the Federal Government.

Due to the anticipated decrease in DSH federal allotment, DHCFP expects a reduction in DSH supplemental payments to eligible hospitals.

**The economic effect of the regulation on the public:**

**(a) Both adverse and beneficial effects; and**

There are no adverse or beneficial effects to the public.

**(b) Both immediate and long-term effects.**

There are no adverse or beneficial effects to the public.

**8. The estimated cost to the agency for enforcement of the adopted regulation.**

There is no cost anticipated for the implementation of these changes.

**9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There is no other state or federal regulations that overlap or duplicate the proposed regulation.

**10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

N/A

**11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

N/A

**12. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

No. The Disproportionate Share Hospital (DSH) program is intended to compensate hospitals serving low-income patients. The projected DSH program federal allocation will be progressively decreasing, requiring revisions to the current methodology.

An analysis of the number of employees of the hospitals that are currently participating in the program was conducted. Only one of the current DSH eligible hospitals, Mt. Grant General Hospital meets the statutory definition of a small business.

The new methodology results in a very slight increase in DSH payments for what this hospital would have received. The increase is negligible and based on a projected allotment.