

ANALYSIS

Oregon Health Authority Disproportionate Share Hospitals

Analyst: Matt Stayner

Request: Acknowledge the receipt of a report on the status of funding for the Disproportionate Share Hospital 3 program and recommendations needed to achieve full federal funding for the 2023-25 biennium.

Analysis: The Disproportionate Share Hospital (DSH) program is a mechanism for offsetting a portion of the losses that hospitals incur as a result of providing uncompensated care to uninsured individuals and Medicaid patients. The program is authorized and administered by the Centers for Medicare and Medicaid Services (CMS). Each year, CMS provides a funding allotment, or maximum funding cap for the DSH program. This allotment is inclusive of both the federal and state funding components; the proportion of which is estimated using the current blended Federal Medical Assistance Percentage (FMAP) for Oregon. The current estimated state allotment for DSH funding for the 2023-25 biennium is \$198 million. This is a combination of the final 2023-year allotment of \$99 million and the estimated 2024-year allotment of \$99 million. For the purpose of estimating the 2024-year allotment, the Oregon Health Authority did not apply an inflationary factor to the final 2023-year allocation, and in determining the state and federal share, used an FMAP of 59% rather than the 59.31% used in the 2023-year.

The DSH program, as implemented by the Oregon Health Authority under the state plan, is subdivided into three subprograms. The subject of the OHA report is the DSH-3 subprogram. This program is where the state plan has defined those hospitals with a Medicaid utilization rate of at least one percent, and maintain at least two obstetricians who treat Medicaid enrollees, as DSH hospitals. For context, there are two other subprograms that receive financial support through the federal program, but are not covered in the report. The DSH program for Institutes of Mental Disease (IMD), provides a flat, biennial allocation of \$40 million of DSH funding to support the Oregon State Hospital. The DSH-1 program provides financial support to hospitals that are deemed DSH hospitals, by definition, under the Social Security Act of 1923. The DHS-2 program is no longer used.

After accounting for funding dedicated to the DSH-1 and IMD programs, the remaining allotment of DSH funding for the DSH-3 program is \$149.8 million. As described in the OHA report, and using the assumed FMAP, this produces a state obligation of \$61.2 million. The legislatively approved budget for OHA includes expenditure limitation of \$23 million for the state portion of the DSH-3 program. These monies are derived from hospital tax revenues. This leaves a net budgetary shortfall in state funding of \$38.2 million.

Although the legislatively approved budget currently includes \$23 million for the state portion of the DSH-3 program, that amount was established based on estimated tax revenues that were assumed prior to the current biennium. As actual tax revenues are received, additional funding may be available. It is also important to keep in mind that the DSH-3 payments to hospitals are made once per year in June for the preceding fiscal year allotment. The 2023-year allotment will be paid to hospitals in June of 2024. The 2023-year allotment available for DSH-3 payments is \$30.3 million. After accounting for the \$23 million in state funding already included in the legislatively approved budget for OHA, the shortfall for

the upcoming June 2024 payment is \$7.3 million. This leaves a shortfall for the 2024-year payment that is due in June 2025 of \$30.9 million.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends that the Joint Committee on Ways and Means acknowledge receipt of the report.

Request: Report by the Oregon Health Authority (OHA) on how to maximize Federal Funds available for the Disproportionate Share Hospital 3 program as required by a budget note in the budget report for Senate Bill 5525 (2023).

Recommendation: Acknowledge receipt of the report.

Discussion: The budget report for Senate Bill 5525 (2023), OHA's main budget bill for the 2023-25 biennium, includes a budget note with the following direction:

Budget Note: DSH3 Program

OHA shall present to the Joint Committee on Ways and Means during the 2024 regular session on the status of funding for the Disproportionate Share Hospital 3 program and any recommendations needed to achieve full federal funding for the 2023-35 biennium.

The Disproportionate Share Hospital (DSH) program is a federally authorized Medicaid supplemental payment program for hospitals who serve a large number of Medicaid and uninsured patients. The program began in 1981 due to Congressional concern that state discretion over the level of hospital reimbursements via Medicaid could jeopardize the finances of institutions with high numbers of Medicaid patients. The budget note report was requested at a time when many Oregon hospitals were struggling financially in the wake of pandemic-related changes in hospital utilization and hospital workforce challenges.

OHA has a legislatively adopted budget of \$23.0 million Other Funds and \$34.0 million Federal Funds to make DSH 3 payments during the 2023-25 biennium. In the 2021-23 biennium, OHA received authorization to use \$8.6 million in Hospital Tax revenue carried over from 2019-21 to leverage \$13.0 million Federal Funds for DSH payments through House Bill 5202 (2022). The Legislature later appropriated an additional \$15.5 million General Fund to leverage \$29.1 million Federal Funds to fully leverage Oregon's federal DSH allotment and to support Oregon's hospitals through House Bill 5047 (2023).

Federal DSH Program Mechanics

Federal law and administrative rules govern the DSH program and limit how funds can be used. There are two primary limits on DSH spending: a per-facility limit and a federal allotment. The per-facility limit prevents facilities from receiving more in DSH payments than they expended to pay for un- or under-compensated care. The federal allotment limits the total amount of DSH Federal Funds available to the state and is set annually by the federal government. DSH payments are treated as matched funds for Medicaid purposes and use the state's regular federal match rate (FMAP) at the time of the DSH payment to provide federal match. The annual allotment grows by the Consumer Price Index for urban consumers.

Within the overall DSH allotment is a separate DSH allotment for Institutes of Mental Disease (IMD), a term used by the federal government to describe facilities with 16 or more beds where individuals receive treatment for mental illness. The federal Patient Protection and Affordable Care Act (2010) included a series of reductions to DSH allotments on the theory that hospitals would have less un- or under-compensated care as a result of the Medicaid and marketplace expansion policies included in the bill. Subsequent sessions of Congress have repeatedly delayed the implementation of these reductions; the most recent continuing resolution passed on January 19, 2024, further delays the DSH allotment reductions from taking effect until March 8, 2024. OHA's DSH estimates (discussed below) assume those delays continue throughout 2023-25.

How OHA Administers Oregon's DSH Allotment

Within federal law and rules, states have discretion over how DSH funds are allocated. OHA's Medicaid State Plan and administrative rules further define how its DSH allotment is allocated. OHA allocates its IMD DSH allotment solely to the Oregon State Hospital. For the acute care hospitals, OHA has established three sub-programs:

- DSH 1 is for hospitals, which are "deemed DSH hospitals," meaning the hospital has Medicaid utilization at least one standard deviation above the average for Medicaid-participating hospitals in the state or the hospital has a low-income inpatient utilization greater than 25 percent. OHA allocates funding among these hospitals on a series of percentages set in rule times the relative severity of illness in patients served by the hospital. According to OHA there are only seven or eight hospitals that qualify under this portion of the program. OHA has a budget of \$3.2 million General Fund and \$4.9 million Federal Funds in 2023-25 for DSH 1.
- DSH 2 is for Oregon Health Sciences University (OHSU), who received DSH payments up to 100 percent of the cost of serving Medicaid fee for service clients and indigent and uninsured patients using leveraged funds from OHSU. DSH 2 was replaced by an intergovernmental transfer and qualified directed payment arrangement between OHA and OHSU in 2018 and is no longer used.
- DSH 3 is for hospitals with a Medicaid utilization rate of at least one percent and at least two obstetricians who treat Medicaid enrollees. Most hospitals who receive DSH qualify under this program. OHA allocates funding among these hospitals based on their proportional share of the amount of un- or under-compensated care provided times the remaining DSH allotment after DSH 1 payments. OHA has a budget of \$23.0 million Other Funds (using hospital provider tax revenues) and \$34.0 million Federal Funds for DSH 3 in 2023-25.

OHA makes DSH payments once per year in June from preliminary federal fiscal year allotments; for instance, the payment coming up in June 2024 will be from the federal Fiscal Year 2023 allotment. After final DSH allotments are posted, typically a few years after the fiscal year in question, OHA may need to recoup funds from hospitals if the final DSH allotment exceeded the preliminary allotment. OHA contracts with third parties to audit hospital expenditure data that qualifies them for DSH. Audits are conducted on a three-year cycle. If hospitals received an overpayment, OHA may recoup the payment and redistribute DSH funds to other qualified hospitals.

Maximize Oregon's DSH Allotment

The end of the DSH 2 program in 2018, as discussed above, resulted in available federal DSH allotment that could be used for other portions of the DSH program. OHA believes the availability of state funds is the only limiting factor to maximizing Oregon's DSH allotment. To fully utilize the DSH allotment, OHA estimates it would need an additional \$38.0 million General Fund to support the program in 2023-25. General Fund is needed because there is no additional hospital provider tax revenue to support these expenditures in 2023-25. The General Fund would leverage an additional \$54.6 million Federal Funds, with funds flowing through the DSH 3 program using current allocation rules.



February 2, 2024

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Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
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Salem, OR 97301

Dear Co-Chairs:

Nature of Request

The Oregon Health Authority (OHA) is submitting this report to comply with the following budget note included in the Senate Bill 5525 (2023 Regular Session) Budget Report and Measure Summary:

OHA shall present to the Joint Committee on Ways and Means during the 2024 regular session on the status of funding for the Disproportionate Share Hospital 3 program and any recommendations needed to achieve full federal funding for the 2023-2025 biennium.

Agency Action

Disproportionate Share Hospital (DSH) is a program administered by the Centers for Medicare and Medicaid Services (CMS). The DSH program exists to help acute care hospitals defray financial losses of providing uncompensated care to uninsured and Medicaid patients, thus maintaining access for low-income populations. CMS provides each state with an annual DSH allotment for several programmatic components. DSH3 is currently a program in which hospital provider tax revenue is used as the state share to draw down remaining DSH allotment for qualifying DRG and Type A and B hospitals after the other DSH program payments have been made. To qualify, OHA performs a financial analysis as specified in the Medicaid State Plan to determine which hospitals have projected shortfalls. The total of all hospital shortfalls determines the total amount of DSH payments possible, as long as it remains under the remaining federal DSH allotment.

Senator Elizabeth Steiner
Representative Tawna Sanchez
February 2, 2024
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OHA's 2023-2025 Legislatively Approved Budget includes \$23 million hospital tax (Other Funds) revenue and \$34 million of Federal Funds limitation to be used as the state share for drawing down the DSH3 federal allotments. OHA estimates the amount of DSH3 federal allotment available for the 2023-2025 biennium at \$88.6 million Federal Funds. To draw down that entire amount would require \$61.2 million in state funding. Therefore, to fully fund the program, OHA would need an additional \$38.2 million in state funds and \$54.6 million in Federal Funds limitation.

2023-25 estimated federal maximum for DSH3:

	State Funds	Federal Funds	Total Funds
2024	30,300,000	44,100,000	74,400,000
2025	30,900,000	44,500,000	75,400,000
Total	61,200,000	88,600,000	149,800,000

Legislatively Approved Budget:

	State Funds	Federal Funds	Total Funds
2023-2025	23,000,000	34,000,000	57,000,000

Revenue/authority need to spend to federal maximum:

	State Funds	Federal Funds	Total Funds
Need	38,200,000	54,600,000	92,800,000

OHA will maximize Federal Funds in this program to the extent funds are available. DSH3 payments are made annually in June.

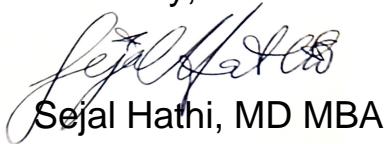
Action Requested

Acknowledge receipt of this report.

Legislation Affected

None.

Sincerely,



Sejal Hathi, MD MBA
Interim Director

EC: Matt Stayner, Legislative Fiscal Office
Patrick Heath, Department of Administrative Services
Kate Nass, Department of Administrative Services
Amanda Beitel, Legislative Fiscal Office