



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT

8.311.3 NMAC, METHODS AND STANDARDS FOR ESTABLISHING PAYMENT –
INPATIENT HOSPITAL SERVICES

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
FINAL RULE

V. BACKGROUND SUMMARY

New Mexico Human Services Register Volume 41, Register 21, dated August 14, 2018, issued the proposed rule, 8.311.3 NMAC, Methods and Standards for Establishing Payment – Inpatient Hospital Services.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: August 14, 2018
Hearing Date: September 13, 2018
Adoption Date: January 1, 2019
Technical Citations: 42 CFR 412

A public hearing was held on September 13, 2018, to receive public comments and testimony on this proposed rule. The Human Services Department (the Department) received two oral comments, no recorded comments and five written comments. The two oral comments were also provided in written format.

Summary of Comments

Section 12: Prospective Payment Methodology For Hospitals

Subsection C

One commenter stated the proposed language seems to create less transparency regarding the Department's adherence to the existing language "the application of the MBI inflation factor will be reviewed." The individual commented that without a regular notice being sent, there is no consistent way for hospitals to know if a review was conducted. The commenter offered to work with the Department to analyze the impact of a potential return to a regular rebasing process.

Department Response: The revised wording in the rule did not intend to imply that there would be any diminished communication with hospitals. The Department works closely with the New Mexico Hospital Association regarding anticipated adjustments in payment levels which then are followed by notices to the impacted providers, including providing an opportunity for public comment when appropriate. Based on the comment, the wording in the rule was changed to state that a notice will be provided every year, including in the years when no increase is anticipated.

Subsection F Paragraph (1) Outlier Cases

One commenter supports the removal of the age limitation for outlier cases and recommends the change be applied to all hospitals, not just the state teaching hospital. The individual stated the increase of the dollar threshold is a reasonable offset to elimination of the age limit but indicated the proposed amount of \$200,000 is too high. The commenter recommended lowering the attachment point to \$125,000, with consideration for a regular inflation adjustment for future years.

Department Response: Removing the age limitation for outlier cases for all hospitals was not proposed in the rule and, thus, cannot be added to the final rule. A change of such significance would have to be included in a new proposed rule.

The Department appreciates the suggestion and will consider it. However, because of varying amounts of funding available to the Medicaid Program each year, HSD only proposes increases and other changes when the outlook for sustaining those increases is promising. Therefore, at this point, the age limitation for hospitals other than the state teaching hospital, will not be changed.

Another commenter requested confirmation that the attachment point of \$100,000 in billed charges continues to apply to the state teaching hospital for children under six years of age (if a disproportionate share hospital) and infants under one year of age. The commenter also requested that outlier cases specific to the state teaching hospital attach at a point lower than \$200,000 and include cases for eligible recipients over age six with medically necessary services exceeding \$125,000 in billed charges. The individual stated it is not clear that the State's only teaching hospital could continue to qualify for outlier payments at the lower attachment point for certain cases involving infants and children.

The commenter strongly opposes a change to the rule because it would disallow stop loss at the lower attachment point for pediatric cases and would cause approximately 60% of up-to-age-six outlier cases to no longer be covered by stop loss. Many of these cases involve prematurity or complications at birth and would result in only about 37% of the state teaching hospital's cost of

care being covered and DRG payment does not always adequately reimburse high-cost pediatric care. Additionally, with the \$200,000 attachment point, many high-cost claims are not covered by stop loss; only about 33% of high-cost, complex cases would be covered. The commenter cited a specific example in which the proposed \$200,000 attachment point would cause a serious reimbursement shortage; whereas, with an attachment point of \$125,000, about 72% of high-cost, complex cases would be covered.

Department Response: The rule as proposed in 8.311.3.10 G, was to remove the age limit only for the state teaching hospital. Likewise, 8.311.3.12 F (1) (a), page 7, specifically shows the wording regarding outlier cases (other than the state teaching hospital), to be unchanged, keeping the over \$100,000 in billed charges and lengths of stay of 75 calendar days or more. Age limits also remain unchanged.

Also the rule, as proposed, would remove any state teaching hospital claim billed at \$200,000 or less from being considered an outlier claim unless the length of stay was 75 calendar days or more.

Based on the public comments, the Department agrees the wording is confusing in the proposed rule. In order to more equitably apply the rule for paying outliers, the final rule revises and restates the conditions for outlier payment such that the age limits currently in effect for hospitals, disproportionate share hospitals (not including the state teaching hospital) and the dollar amount criterion of over \$100,000 will remain unchanged. For the state teaching hospital, there are no age limits and the dollar amount criterion will be over \$125,000.

Subsection F Paragraph (6) Indirect medical education (IME) adjustment

Three commenters expressed the same view regarding the proposed changes. First, they stated the amendment appears to expand eligibility for IME payments to additional hospitals in the state roster if they have ACGME-accredited programs. If that is the case, the commenters support this amendment; it would allow for potential Medicaid GME payments in support of future ACGME-accredited training locations. If that is not the case, the commenters suggest changing the proposed regulations to ensure that all DRG hospitals (PPS-exempt hospitals) that operate an ACGME-accredited primary care residency program, be made eligible for IME support.

Department Response: 8.311.3.12 F.(6) (a) (iii) page 9, states that a hospital which “operates a nationally-accredited primary care residency program” is deemed eligible for an IME adjustment. That is an expansion over the existing rule, which the Department believes is consistent with the commenters understanding. However, GME is still restricted to the single recognized state teaching hospital and is not available to other hospitals on the basis of ACGME-accredited training programs.

Two commenters support of the addition of the expanded Medicaid population under ACA for GME payments because this approach appears to stretch state matching funds and reduce the overall burden of GME (IME and DGME) financing to the state. The commenters indicated this savings should be considered when budgeting for expanded residency development.

Department Response: This comment has been noted.

Two commenters remarked that the proposed changes will enhance training in urban settings in NM, which is an important concept, if the state is to address the overall shortage of primary care providers and physician shortages. The commenters explained that expanding resident training into non-DRG hospital settings such as rural hospitals and FQHCs is important as urban based training provides a much smaller percentage of its graduates to rural areas than rural-based training and rural-based hospitals; FQHCs are more likely to train primary care providers than large urban hospitals. The commenters have been working with HSD to develop regulations to allow non-DRG hospitals and FQHCs access to Medicaid payment for training with distinct Medicaid regulatory language separate from the hospital payment system focus included in the proposed amendments; language is included in the most recent 1115 Waiver request. The commenters recommend regulations supporting the financing of GME in rural hospital and FQHCs be developed and included in this iteration of regulatory improvements. If that is not possible, a short-term plan should address the need and desire of rural hospitals and FQHCs to assist HSD in meeting the need of Medicaid patients for access to comprehensive primary care service through ACGME-accredited primary care and psychiatric training. The commenters remarked that this is the first step in improving primary care and other physician supply to meet the needs of Medicaid patients in New Mexico.

Department Response: This comment has been noted and the Department will continue to work to address this issue.

Section 13: Disproportionate Share Hospitals

Subsection E

One commenter supports the 90-day requirement for hospitals to return an overpayment. However, the commenter suggests the language “unless otherwise directed by the department” be replaced with “unless an alternative payment timeline is negotiated between the provider and the Department” so the hospital has an opportunity to seek an alternative payment timeline.

Department Response: The Department has one year from the date of discovery of an overpayment to a provider to recover or seek to recover the overpayment before the federal share must be refunded to CMS in accordance with 42 CFR 433.312.; CMS does not provide the Department extensions on DSH overpayments.

Section 14: Determination of Actual, Allowable, and Reasonable Costs

Subsection C

One commenter stated that the proposed language is reasonable and aligns with what has already been the standard practice for many years.

Department Response: The Department thanks the commenter. The language stands as proposed.

VI. RULE


These amendments will be contained in 8.311.3 NMAC. The final register and rule languages are available on the HSD website at: <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> and <http://www.hsd.state.nm.us/providers/rules-nm-administrative-code-.aspx>. If you do not have internet access, a copy of the final register and rule may be requested by contacting MAD at 505-827-1337.

VII. EFFECTIVE DATE

This rule has an effective date of January 1, 2019.

VIII. PUBLICATION

Publication of these rules approved by:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT