Upper Payment Limit (UPL) Rate Add-ons

Effective date: 7/24/20

Pursuant to the authority vested in the Commissioner of Health by Sections 2807-c(35)(b)(iv-a) and 2807(2-a)(e)(iv) of the Public Health Law Sections 86-1.20, 86-1.23 and 86-8.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are amended to be effective upon filing with the Secretary of State, to read as follows:

Section 86-1.20 of 10 NYCRR is amended by adding a new subdivision (d) to read as follows:

(d) For dates of service occurring on or after April 1, 2020 through December 31, 2020, and each calendar year thereafter, an Upper Payment Limit (UPL) payment per discharge shall be added to the case payment rates after the application of SIW and WEF adjustments to the statewide base price (hereinafter, "add-ons"). Such add-ons shall only apply to eligible public general hospitals or public health systems, other than those operated by the state of New York or the state university of New York, located in a city having a population of one million or more and shall be in lieu of any aggregate UPL payment. Such add-ons shall be calculated for each hospital by dividing the hospital's latest approved UPL demonstration payment, by its Medicaid fee-for-service acute discharges, as reported in its most recently submitted Institutional Cost Report. Each hospital's add-on shall be subject to and contingent upon the terms of a binding memorandum of understanding executed between the Department of Health and the public general hospital or public health system receiving an add-on, and shall be subject to termination or adjustment based on the terms of that agreement. The total amount paid for the add-on shall be included in the applicable annual UPL demonstration. If the annual UPL

demonstration yields an amount that is more or less than the aggregate amount paid for the add-on, the add-on shall be adjusted to reflect the demonstration amount.

Section 86-1.23 of 10 NYCRR is amended by adding a new paragraph (3) to subdivision (e) to read as follows:

(3) For dates of service occurring on or after April 1, 2020 through December 31, 2020, and each calendar year thereafter, an Upper Payment Limit (UPL) payment per diem shall be added to the specialty long term acute care hospital rates (hereinafter "add-ons"). Such add-ons shall only apply to eligible public general hospitals or public health systems, other than those operated by the state of New York or the state university of New York, located in a city having a population of one million or more and shall be in lieu of any aggregate UPL payment. Such add-ons shall be calculated for each hospital by dividing the hospital's latest approved UPL demonstration payment, by its Medicaid fee-for-service specialty hospital days, as reported in its most recently submitted Institutional Cost Report. Each hospital's rate add-on shall be subject to and contingent upon the terms of a binding memorandum of understanding executed between the Department of Health and the public general hospital or public health system receiving an add-on, and shall be subject to termination or adjustment based on the terms of that agreement. The total amount paid for the add-on shall be included in the applicable annual UPL demonstration. If the annual UPL demonstration yields an amount that is more or less than the aggregate amount paid for the add-on, the add-on shall be adjusted to reflect the demonstration amount.

Section 86-8.4 of 10 NYCRR is being amended as follows:

Section 86-8.4 Capital cost reimbursement and rate add-ons

(a) A capital cost component shall be added to Medicaid payments made pursuant to this Subpart and computed in accordance with the following:

[(a)](1) The computation of the capital cost component for payments for general hospital outpatient and emergency services shall remain subject to otherwise applicable statutory provisions as set forth in subparagraphs (i) and (ii) of paragraph (g) of subdivision 2 of section 2807 of the public health law.

[(b)](2) The computation of the capital cost component for payments for diagnostic and treatment center services shall remain subject to otherwise applicable statutory provisions as set forth in paragraph (b) of subdivision 2 of section 2807 of the public health law.

[(c)](3) The computation of the capital cost component for payments for ambulatory surgery services provided by hospital-based and free-standing ambulatory surgery centers shall be the result of dividing the total amount of capital cost reimbursement paid to such facilities pursuant to Section 86-4.40 of this Title for the 2005 calendar year for the Upstate Region and for the Downstate Region and then dividing each such regional total amount by the total number of claims paid pursuant to such Section 86-4.40 within each such region for the 2005 calendar year.

(b) For dates of service occurring on or after April 1, 2020 through December 31, 2020, and each calendar year thereafter, an Upper Payment Limit (UPL) payment per visit shall be added to emergency department rates (hereinafter, "add-ons"). Such add-ons shall only apply to public general hospitals or public health systems, other than those operated by the state of New York or the state university of New York, located in a city having a population of one million or more and shall be in lieu of any aggregate UPL payments. Such add-ons shall be calculated for each hospital by dividing the hospital's latest approved UPL demonstration payment by its Medicaid fee-for-service emergency department visits, as reported in its most recently submitted

Institutional Cost Report. Each hospital's add-ons shall be subject to and contingent upon the terms of a binding memorandum of understanding executed between the Department of Health and the public general hospital or public health system receiving an add-on, and shall be subject to termination or adjustment based on the terms of that agreement. The total amount paid for the add-on shall be included in the applicable annual UPL demonstration. If the annual UPL demonstration yields an amount that is more or less than the aggregate amount paid for the add-on, the add-on shall be adjusted to reflect the demonstration amount.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for this regulation is contained in Sections 2807-c(35)(b)(iv-a) and 2807(2-a)(e)(iv) of the Public Health Law (PHL), as added as part of the State Fiscal Year 2020-21 Budget, as well as Section 2807-c(35)(b) and Section 2807(2-a)(e)(i) which, respectively, authorize the Commissioner to promulgate regulations, including emergency regulations, regarding Medicaid reimbursement rates for hospital inpatient and outpatient services. Such rate regulations are set forth in Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR).

Legislative Objectives:

The legislative objective is to convert inpatient and outpatient Upper Payment Limit (UPL) payments to rate add-ons for eligible general government hospitals in a city with a population over one million and not operated by the State of New York or the State University of New York.

Needs and Benefits:

Converting UPL payment to rate add-ons is part of an initiative to strengthen the New York City Health and Hospitals Corporation (H+H). The current annual UPL demonstrations for inpatient and outpatient payments require State Plan Amendment approvals from the Centers for Medicare and Medicaid (CMS) before the UPL payments can be made to hospitals. By converting the UPL payments to rate add-ons for H+H hospitals, the delays associated with waiting for CMS approval are eliminated and results in improved cash flow to these safety net facilities.

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

There is no cost to State Government for this proposed regulation.

Costs of Local Government:

There is no cost to Local Government for this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

No additional paperwork is required of providers.

Duplication:

This regulation does not duplicate any existing federal, state or local government regulation.

Alternatives:

The Department of Health could have chosen to continue making aggregate UPL payments to the H+H hospitals, but the proposed method provides improved cash flow and is consistent with recent amendments to Public Health Law.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Public Health Law requires the Department to convert inpatient and outpatient UPL payments for eligible public hospitals to rate add-ons, in lieu of aggregate payments, for services effective April 1, 2020.

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STATEMENT IN LIEU OF

REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202(b)(3)(a) of the State Administrative Procedure Act. The proposed regulations do not impose an adverse economic impact on small businesses or local governments, and they do not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

STATEMENT IN LIEU OF

RURAL AREA FLEXIBILITY ANALYSIS

No rural flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed regulations do not impose an adverse impact on facilities in rural areas, and they do not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed rule will not have a substantial adverse impact on jobs or employment opportunities, nor does it have adverse implications for job opportunities.

EMERGENCY JUSTIFICATION

The proposed amendments implement an Upper Payment Limit rate add-on for both inpatient and outpatient rates in Public Health Law Sections 2807-c(35)(b)(iv-a) and 2807(2-a)(e)(iv).

Public Health Law Section 2807-c(35)(b) and Section 2807(2-a)(e)(i) provide the Commissioner of Health with authority to issue emergency regulations. These regulations are required in order to convert Upper Payment Limit (UPL) payments for eligible general government hospitals in a city with a population over one million and not operated by the State of New York or the State University of New York into inpatient and outpatient rate add-ons.