

PRIMARY CARE PHYSICIAN MEDICAID PAYMENT BUMP - PROPOSED RULE

This installment of Hall Render's Health Law Broadcast series on health care reform is designed to provide you with the insight, analysis and practical suggestions with respect to the various reform initiatives that will affect your organization.

On May 11, 2012, the Centers for Medicare and Medicaid Services ("CMS") published a proposed rule ("Proposed Rule") to implement new requirements in the Affordable Care Act ("ACA") that provide for an increase in Medicaid payments to primary care physicians for primary care services furnished in calendar years ("CY") 2013 and 2014, at rates not less than Medicare rates in effect for those years or, if greater, payment rates applicable in 2013 and 2014 using the CY 2009 Medicare Physician Fee Schedule ("MPFS") conversion factor. The federal matching rate for the payment increase would equal 100%, meaning the bump in payment rates would be completely subsidized by the federal government. Further, the payment rate increase applies to certain primary care services paid on a fee-for-service basis *as well as* those paid by Medicaid managed care plans such as managed care organizations ("MCOs"), prepaid inpatient health plans ("PIHPs") and prepaid ambulatory health plans ("PAHPs"). The purpose of this health reform program is to encourage more primary care physicians to participate in Medicaid in anticipation of the expansion of Medicaid eligibility under the ACA starting in 2014. Also, the Proposed Rule would update the maximum fees providers can charge for the administration of pediatric vaccines to eligible children under the "Vaccines for Children" program. The Proposed Rule may be found [here](#).

THE PROPOSED RULE - SPECIFICS

Eligibility for Higher Payments. Physicians who self-attest to a specialty designation of family medicine, general internal medicine or pediatric medicine would be eligible to receive the higher Medicaid payment based on Medicare rates. Primary care subspecialists recognized by the American Board of Medical Specialties also would qualify for the higher Medicaid payment (e.g., pediatric cardiologists furnishing a specified primary care service). The Medicaid agency would be required to verify that the primary care specialist or subspecialist either was board certified in his/her specialty/subspecialty, or had furnished evaluation and management services and vaccine administration services that equaled at least 60% of the Medicaid codes billed during the most recently completed CY. Moreover, since many Medicaid primary care services are furnished by nurse practitioners and physician assistants, the Proposed Rule provides for increased payment for primary care services furnished directly by the primary care physician or "under the personal supervision" of the primary care physician.

Services Eligible for Higher Payment Rate. Evaluation and Management codes 99201 through 99499 and CPT vaccine administration codes 90460, 90461, 90471, 90472, 90473 and 90474 would be eligible for reimbursement at the higher rates if the Proposed Rule is finalized as is. Of note, CMS is proposing to include certain *non-Medicare covered primary care services* as services eligible for higher payment since some of these non-Medicare covered services are a "core component of services" routinely delivered to the Medicaid population. Examples include "New Patient/Initial Comprehensive Preventive Medicine"-codes 99381 through 99387 and "Counseling Risk Factor Reduction and Behavior Change Intervention"-codes 99401 through 99404.

Applicability of Higher Payment Rates to Medicaid Managed Care. CMS would require that for FY 2013-2014, MCOs, PIHPs and PAHPs under contract with states would pay primary care physicians for specified primary care services provided to Medicaid enrollees at the MPFS rates. The contract between these managed care plans and the state would obligate such managed care plans to pay the higher Medicare rates and to provide adequate documentation to the state verifying the pay differential. Further, 100% federal matching funds would be available for the increased managed care plan payments to physicians if the following requirements are met:

1. The state makes a "reasonable estimate" of the increased payments made to primary care physicians based on information received from the managed care provider;
2. The state develops a methodology for identifying the payment differential; and
3. The state submits its methodology to CMS before the beginning of CY 2013.

PRACTICAL CONSIDERATIONS

The Proposed Rule is an important step toward facilitating increased primary care physician participation in Medicaid to accommodate the expansion of Medicaid eligibility provided for under the ACA. However, it is unclear how many primary care physician specialists and subspecialists will be motivated to enroll, given that the increased pay is currently limited to a two-year period. Of note, the increased payment to primary care physicians applies only for services reimbursed under the MPFS. Therefore, the payment bump would not be applicable to physician services provided under other sections of the Social Security Act, such as under the FQHC or RHC benefits sections, where payment is made on a facility basis and is not specific to physician services. Finally, the future of the ACA is uncertain until the Supreme Court renders its decision this month. That decision could derail this Proposed Rule in its entirety.

If you have any questions or would like additional information about this topic, please contact Adele Merenstein at (317) 752-4427 or amerenst@hallrender.com, Elizabeth A. Elias at (317) 977-1468 or eelias@hallrender.com or your regular Hall Render attorney.

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