October 2011 Ambulatory Patient Groups (APGs) Payment Methodology

Effective date: 3/14/12

Pursuant to the authority vested in the Commissioner of Health by sections 2807(2-a)(e) of the Public Health Law, as amended by Part C of Chapter 58 of the Laws of 2008 and Part C of Chapter 58 of the Laws of 2009, the following sections of Subpart 86-8 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of the Notice of Adoption in the New York State Register, and to read as follows:

Subdivision (r) of section 86-8.2 is hereby repealed.

Section 86-8.7 is hereby repealed effective October 1, 2011 and a new section 86-8.7 is added to read as follows:

(a) The table of APG Weights, Procedure Based Weights and units, and APG Fee Schedule Fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls

Subdivision (c) of section 86-8.9 is repealed and a new subdivision (c) is added, to read as follows:

(c) Drugs purchased under the 340B drug benefit program and billed under the APG reimbursement methodology shall be reimbursed at a reduced rate comparable to the reduced cost of drugs purchased through the 340B drug benefit program.
Subdivision (d) of section 86-8.9 is amended to read as follows:

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94 CARDIAC REHABILITATION
274 PHYSICAL THERAPY, GROUP
275 SPEECH THERAPY AND EVALUATION, GROUP
322 MEDICATION ADMINISTRATION AND OBSERVATION
414 LEVEL I IMMUNIZATION AND ALLERGY IMMUNOTHERAPY
415 LEVEL II IMMUNIZATION
416 LEVEL III IMMUNIZATION
428 PATIENT EDUCATION, INDIVIDUAL
429 PATIENT EDUCATION, GROUP
451 SMOKING CESSATION TREATMENT

Subdivision (h) of section 86-8.10 is amended to read as follows:

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065 RESPIRATORY THERAPY
066 PULMONARY REHABILITATION
117 HOME INFUSION
190 ARTIFICIAL FERTILIZATION
311 FULL DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
313 HALF DAY PARTIAL HOSPITALIZATION FOR SUBSTANCE ABUSE
314 HALF DAY PARTIAL HOSPITALIZATION FOR MENTAL ILLNESS
319 ACTIVITY THERAPY
Subdivision (i) of section 86-8.10 is amended to read as follows:

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281 MAGNETIC RESONANCE ANGIOGRAPHY – HEAD AND/OR NECK
282 MAGNETIC RESONANCE ANGIOGRAPHY – CHEST
283 MAGNETIC RESONANCE ANGIOGRAPHY – OTHER SITES
284 MYELOGRAPHY
285 MISCELLANEOUS RADIOLOGICAL PROCEDURES WITH CONTRAST
286 MAMMOGRAPHY
287 DIGESTIVE RADIOLOGY
288 DIAGNOSTIC ULTRASOUND EXCEPT OBSTETRICAL AND VASCULAR OF LOWER EXTREMITIES
289 VASCULAR DIAGNOSTIC ULTRASOUND OF LOWER EXTREMITIES
290 PET SCANS
291 BONE DENSITOMETRY
292 MRI – ABDOMEN
293 MRI – JOINTS
294 MRI – BACK
295 MRI – CHEST
296 MRI – OTHER
297 MRI - BRAIN
298 CAT SCAN BACK
299 CAT SCAN - BRAIN
300 CAT SCAN - ABDOMEN
301 CAT SCAN - OTHER
302 ANGIOGRAPHY, OTHER
303 ANGIOGRAPHY, CEREBRAL
330 LEVEL I DIAGNOSTIC NUCLEAR MEDICINE
331 LEVEL II DIAGNOSTIC NUCLEAR MEDICINE
332 LEVEL III DIAGNOSTIC NUCLEAR MEDICINE
373 LEVEL I DENTAL FILM
374 LEVEL II DENTAL FILM
375 DENTAL ANESTHESIA
380 ANESTHESIA
390 LEVEL I PATHOLOGY
391 LEVEL II PATHOLOGY
392 PAP SMEARS
393 BLOOD AND TISSUE TYPING
394 LEVEL I IMMUNOLOGY TESTS
395 LEVEL II IMMUNOLOGY TESTS
396 LEVEL I MICROBIOLOGY TESTS
397 LEVEL II MICROBIOLOGY TESTS
398 LEVEL I ENDOCRINOLOGY TESTS
399 LEVEL II ENDOCRINOLOGY TESTS
400 LEVEL I CHEMISTRY TESTS
401 LEVEL II CHEMISTRY TESTS
402 BASIC CHEMISTRY TESTS
403 ORGAN OR DISEASE ORIENTED PANELS
404 TOXICOLOGY TESTS
405 THERAPEUTIC DRUG MONITORING
406 LEVEL I CLOTTING TESTS
407 LEVEL II CLOTTING TESTS
408 LEVEL I HEMATOLOGY TESTS
409 LEVEL II HEMATOLOGY TESTS
410 URINALYSIS
411 BLOOD AND URINE DIPSTICK TESTS
413 CARDIOGRAM
435 CLASS I PHARMACOTHERAPY
436 CLASS II PHARMACOTHERAPY
437 CLASS III PHARMACOTHERAPY
438 CLASS IV PHARMACOTHERAPY
439 CLASS V PHARMACOTHERAPY
440 CLASS VI PHARMACOTHERAPY
444 CLASS VII PHARMACOTHERAPY
448 AFTER HOURS SERVICES
[451 SMOKING CESSATION TREATMENT]
455 IMPLANTED TISSUE OF ANY TYPE
457 VENIPUNCTURE
460 CLASS VIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
461 CLASS IX COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
462 CLASS X COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
463 CLASS XI COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
464 CLASS XII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY
470 OBSTETRICAL ULTRASOUND
471 PLAIN FILM
472 ULTRASOUND GUIDANCE
473 CT GUIDANCE
490 INCIDENTAL TO MEDICAL, SIGNIFICANT PROCEDURE OR THERAPY VISIT
REGULATORY IMPACT STATEMENT

Statutory Authority:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, as amended by Part C of Chapter 58 of the Laws of 2008 and Part C of Chapter 58 of the Laws of 2009, which authorize the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

The Legislature’s mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through Ambulatory Patient Groups ("APGs"). The APGs refer to the Enhanced Ambulatory Patient Grouping classification system which is owned and maintained by 3M Health Information Systems. The Enhanced Ambulatory Group classification system and the clinical logic underlying that classification system, the EAPG software, and the Definitions Manual associated with that classification system, are all proprietary to 3M Health Information Systems. APG-based Medicaid Fee For Service payment systems have been implemented in several states including: Massachusetts, New Hampshire, and Maryland.

Needs and Benefits:

This amendment replaces the actual APG weights, APG procedure based weights, and the APG fee schedule amounts listed in section 86-8.7 with a link to the New York State Department of Health
website where all of the APG weights, APG procedure based weights, and the APG fee schedule amounts are posted for all periods. Removing this specificity from the regulation text obviates the need for quarterly amendments to the APG regulation.

**COSTS**

**Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:**

There will be no additional costs to providers as a result of these amendments.

**Costs to Local Governments:**

There will be no additional costs to local governments as a result of these amendments.

**Costs to State Governments:**

There will be no additional costs to NYS as a result of these amendments.

**Costs to the Department of Health:**

There will be no additional costs to the Department of Health as a result of these amendments.

**Local Government Mandates:**

There are no local government mandates.

**Paperwork:**

There is no additional paperwork required of providers as a result of these amendments.

**Duplication:**

This regulation does not duplicate other state or federal regulations.
Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-(a)(e)). Although the 2009 amendments to PHL 2807 (2-a) authorize the Commissioner to adopt rules to establish alternative payment methodologies or to continue to utilize existing payment methodologies where the APG is not yet appropriate or practical for certain services, the utilization of the APG methodology is in its relative infancy and is otherwise continually monitored, adjusted and evaluated for appropriateness by the Department and the providers. This rulemaking is in response to this continually evaluative process.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon publication of the Notice of Adoption in the New York State Register.

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Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers’ submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Economic and Technical Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service
Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

**Minimizing Adverse Impact:**

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

**Small Business and Local Government Participation:**

Local governments and small businesses were given notice of these proposals by the Department’s issuance in the State Register of a federal public notice on October 5, 2011.
RURAL AREA FLEXIBILITY ANALYSIS

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany  Hamilton  Schenectady
Cattaraugus  Herkimer  Schoharie
Cayuga  Jefferson  Schuyler
Chautauqua  Lewis  Seneca
Chemung  Livingston  Steuben
Chenango  Madison  Sullivan
Clinton  Montgomery  Tioga
Columbia  Ontario  Tompkins
Cortland  Orleans  Ulster
Delaware  Oswego  Warren
Essex  Otsego  Washington
Franklin  Putnam  Wayne
Fulton  Rensselaer  Wyoming
Genesee  St. Lawrence  Yates
Greene

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany  Erie  Oneida
Broome  Monroe  Onondaga
Dutchess  Niagara  Orange

Compliance Requirements:

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.
**Professional Services:**

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Minimizing Adverse Impact:**

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

**Opportunity for Rural Area Participation:**

Local governments and small businesses were given notice of these proposals by the Department’s issuance in the State Register of a federal public notice on October 5, 2011.
JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.