

## Audits of Institutional Cost Reports

Effective date: 2/13/13

Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35) of the Public Health Law, sections 86-1.2 and 86-1.4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective upon publication of the Notice of Adoption in the New York State Register, to read as follows:

Subdivision (k) of section 86-1.2 of title 10 of NYCRR is amended to read as follows:

(k) Accountant's certification. With regard to institutional cost reports filed for report years prior to 2010, [T]he institutional cost report shall be certified by an independent licensed public accountant or an independent certified public accountant. The minimum standard for the term independent shall be the standard used by the State Board of Public Accountancy.

Subdivision (b) of section 86-1.4 of title 10 of NYCRR is amended and a new subdivision (i) is added to read as follows:

(b) Subsequent to the filing of fiscal and statistical reports, field audits [shall] may be conducted of the records of medical facilities in a time, manner and place to be determined by the State Department of Health. [Where feasible, the department shall enter into an agreement to use a combined audit (medicare-medicaid and other organizations and agencies having audit responsibilities) to satisfy the department's auditing needs. In this respect, the State Department of Health reserves the right, after entering into an agreement to use a combined audit, to reject

the audit findings of other organizations and agencies having audit responsibilities and to perform a limited scope or comprehensive audit of their own for the same fiscal period audited by the organization and/or agency.] Alternatively or in addition the Department may, in its sole discretion, conduct desk audits of such fiscal and statistical reports.

(i) (1) Effective for institutional cost reports filed for report periods ending on and after December 31, 2010, the Department shall establish a fee schedule for the purpose of funding audit activities authorized pursuant to this section. Such fee schedule shall be published on the New York State Department of Health website at: <http://www.health.state.ny.us>. The amount of such fees shall be proportional to the amount of the total costs reported by each facility, provided, however, that minimum and maximum fee levels may be established.

(2) Additional fee obligations shall be established for facilities filing more than two institutional costs reports for a reporting period. The Department may, upon written application submitted prior to the submission of such additional institutional cost reports, waive or reduce such additional fees based on a showing of financial hardship or a showing that the additional submission is necessitated by Department error or other factors beyond the facility's control. Such a waiver must be in writing.

(3) Fees shall be submitted at the time of the submission of the institutional costs reports. A failure to pay such fees may be deemed by the Department as constituting the non-filing of the institutional cost report and subject the facility to the rate reduction authorized pursuant to section 86-1.2(c) of this Subpart. Failure to pay the additional fee associated with the filing of additional institutional cost reports as described in paragraph (2) of this subdivision shall result in the non-utilization of such revised cost reports by the Department. Delinquent fees may be

collected by the Department in accordance with the provisions of paragraph (h) of subdivision 18 of section 2807-c of the Public Health law.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Public Health Law section 2807-c(35)(b)(xiii) authorizes the Commissioner to impose a fee, by regulation, on general hospitals that is sufficient to cover the costs of auditing the institutional cost reports submitted by such hospitals.

### **Legislative Objectives:**

The Legislature authorized the Commissioner to impose fees sufficient to cover the costs of auditing institutional cost reports for fiscal purposes and to improve the data integrity of information reported by hospitals. Such information is used to make both policy and financial decisions related to the Medicaid program.

### **Needs and Benefits:**

The proposed rule implementing the provisions of Public Health Law section 2807-c(35)(b)(xiii) provides for the establishment and implementation of a new fee schedule to support the costs of auditing institutional cost reports. The rule also details how the audit process will be implemented. At the same time the Department is exercising its discretion under its pre-existing hospital rate-setting regulation authority pursuant to PHL section 2807-c(35)(b) to eliminate the requirement that hospitals secure certification of their cost reports by an independent licensed CPA.

### **COSTS:**

#### **Costs to State Government:**

There are no additional costs to State government as a result of this amendment.

**Costs of Local Government:**

There will be no additional cost to local governments 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 this amendment.

**Local Government Mandates:**

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

**Paperwork:**

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

**Duplication:**

These regulations do not duplicate existing State and federal regulations.

**Alternatives:**

No significant alternatives are available. The Department is authorized by the Public Health Law section 2807-c(35)(b) to address certain aspects of the hospital reimbursement methodology through regulations.

**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 amendments to Section 86-1.2 limits the requirement that institutional cost reports be certified by an independent licensed or certified public accountant to cost periods prior

to 2010. Regulated parties must continue to comply with this provision when filing institutional cost reports for cost periods prior to 2010.

The proposed amendments to Section 86-1.4 allows the Department to impose fees on general hospitals sufficient to cover the costs of auditing the institutional cost reports submitted by general hospitals for cost periods on and after December 31, 2010. Regulated parties must comply with this provision at the time of submission of the institutional cost report. Failure to comply may subject the facility to a rate reduction. In addition, general hospitals that fail to pay the additional fee associated with filing more than two institutional cost reports for a reporting period will be subject to an additional fee.

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**REGULATORY FLEXIBILITY ANALYSIS**  
**FOR**  
**SMALL BUSINESS AND LOCAL GOVERNMENTS**

**Effect on Small Business and Local Governments:**

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

All health care providers who file Institutional Cost Reports with the Department, including the seven hospitals identified as small businesses, are subject to the provisions of this regulation under section 2807-c(35)(b) of the Public Health Law. However, this rule also eliminates the requirement for all hospitals that annual cost reports be certified by an independent CPA, thus reducing the costs and administrative burdens resulting from that current requirement. In addition, provisions are made to waive or reduce some of the new fees for institutions who demonstrate financial hardship and good cause and who apply for such in writing.

This rule will have no direct effect on Local Governments.

**Compliance Requirements:**

No new reporting, record keeping or other compliance requirements are being imposed as a result of this rule. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on Local Governments.

**Professional Services:**

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

**Compliance Costs:**

While fee obligations related to the filing of institutional cost reports represent a cost for general hospitals, this is offset by the reduction in costs resulting from the elimination of the requirement that reports be certified by an independent certified public accountant. No capital costs will be imposed as a result of this rule, nor will there be 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 technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

**Minimizing Adverse Impact:**

The proposed amendments reflect statutory intent and requirements.

**Small Business and Local Government Participation:**

Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

## 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 reflect statutory intent and requirements.

**Rural Area Participation:**

This amendment is the result of ongoing discussions with industry associations as part of the Medicaid Redesign team process. These associations include members from rural areas. As well, the Medicaid Redesign Team held multiple regional hearings and solicited ideas through a public process.

## **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 rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations allow for the Department to perform field or desk audits of the fiscal and statistical records of medical facilities, establish a fee schedule for filing institutional cost reports for report periods on and after December 31, 2010, and require accountant's certification only for institutional cost reports filed for cost years prior to 2010. The proposed regulations have no implications for job opportunities.