

Service Intensity Weights (SIWs) and Average Length-of-Stay (ALOS), Administrative Appeals and Out-of-State Providers

Effective date: 7/9/14

Pursuant to the authority vested in the Commissioner of Health by Section 2807-c(35)(c) of the Public Health Law, Sections 86-1.18 (e), 86-1.32(d) and 86-1.33(a)(1) of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 86-1.18 of 10 NYCRR is amended by adding a new subdivision (e), to read as follows:

(e) For the period beginning January 1, 2014 and ending, at the discretion of the commissioner, no sooner than April 1, 2014, but no later than July 1, 2014, the SIWs and statewide average LOS utilized for the 2013 calendar year will be utilized by the Department.

Subdivision (d) of section 86-1.32 of 10 NYCRR is amended by adding a new paragraph (3), to read as follows:

(3)(i) Direct medical education (DME) and indirect medical education (IME) costs, as defined in sections 86-1.15(f)(1) and (f)(2) of this Subpart, for hospitals where the teaching status has changed from non-teaching to teaching.

(ii) The effective date of the initial rate adjustment shall be the later of the first of the month following 60 days from the department's receipt of the written notification with documentation requesting a rate adjustment or July 1st of the program year.

Paragraph (1) of subdivision (a) of section 86-1.33 of 10 NYCRR is amended to read as follows:

(1) (i) The weighted average of inpatient rates, including a teaching adjustment where applicable, in effect for similar services for hospitals located in the downstate region of New York State shall apply with regard to services provided by out-of-state providers located in the New Jersey counties of Sussex, Passaic, Bergen, Hudson, Essex, Union, Middlesex and Monmouth, in the Pennsylvania county of Pike, and in the Connecticut counties of Fairfield and Litchfield. [; and]

(ii) For rates effective beginning January 1, 2014, the weighted average of inpatient rates, including a teaching adjustment where applicable, in effect for similar services for hospitals located in the downstate region of New York State shall also apply with regard to services provided by out-of-state providers located in cities where the city's population census is 500,000 or greater based on the U. S. Department of Commerce United States Census Bureau; and

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for this regulation is contained in Section 2807-c(35)(c) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for Hospital 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:**

Currently, 2014 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) were to be utilized effective on or after January 1, 2014. The 2014 SIWs and ALOS were to be implemented at the time the acute hospital inpatient rates were revised for a new cost base year. This amendment delays the implementation of the 2014 SIWs and ALOS and continues the 2013 SIWs and ALOS due to the delay of the implementation of a new cost base year. In addition, the amendment provides for an appeal mechanism for new teaching hospitals to receive reimbursement for a change in teaching status. Further, out-of-state hospitals in cities comparable to New York State's downstate providers will be considered downstate providers and receive the downstate reimbursement payment.

### **Needs and Benefits:**

The amendment to 10 NYCRR 86-1.18 regulations are required in order to continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-

of-stay (ALOS) beginning January 1, 2014 due to the delay, to up to July 1, 2014, of the implementation of the acute inpatient hospital cost base year update, as authorized by the recently enacted 2014-15 budget. The amendment to 10 NYCRR 86-1.32 provides for an appeal mechanism for adjusting hospital inpatient rates to reflect costs associated with new teaching hospital programs, as authorized by an amendment to Public Health Law § 2807-c(35)(b) enacted as part of the 2013-14 budget. The amendment to 10 NYCRR 86-1.33 makes certain out-of-state providers located in large urban areas eligible for inclusion in the downstate peer group for rate-setting purposes.

**COSTS:**

**Costs to Private Regulated Parties:**

There will be no additional costs to private regulated parties.

**Costs to State Government:**

The continuation of the 2013 SIWs and ALOS will not affect State Government costs. However, the reimbursement for new teaching hospitals and the change of the downstate designation for out-of-state providers will result in an increased payment. These costs are minimal as the number of providers impacted are limited.

**Costs of Local Government:**

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of 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:**

No significant alternatives are available.

**Federal Standards:**

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

**Compliance Schedule:**

The proposed regulations requires the Department to use a more current cost base year for discharges on or after April 1, 2014 but no later than July 1, 2014.

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

**Effect of Rule:**

Currently, 2014 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) were to be utilized effective for discharges on or after January 1, 2014. The 2014 SIWs and ALOS were to be implemented at the time the acute hospital inpatient rates were revised for a new cost base year. This amendment delays the implementation of the 2014 SIWs and ALOS and continues the 2013 SIWs and ALOS due to the delay of the implementation of a new cost base year. In addition, the amendment provides for an appeal mechanism for new teaching hospitals to receive reimbursement for a change in teaching status. Further, out-of-state hospitals in cities comparable to New York State's downstate providers will be considered downstate providers and receive the downstate reimbursement payment.

**Compliance Requirements:**

No new reporting, record keeping or other compliance requirements are being imposed as a result of the proposed regulation.

**Professional Services:**

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

**Compliance Costs:**

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

**Economic and Technological Feasibility:**

As the proposed rule affects only the amounts reimbursed for existing services, compliance by small businesses and local governments is not expected to have any economic or technological implications.

**Minimizing Adverse Impact:**

This regulation will not have any adverse impact on the providers as the delay will reduce the adverse impact of processing retroactive rates and provides for additional reimbursement for new teaching hospitals and out-of-state hospitals comparable to New York State's downstate providers.

**Small Business and Local Government Participation:**

The regulation provides for the delay in the 2014 SIWs and ALOS due to the delay of the implementation of update to the cost base for acute hospital inpatient rates. As this delay will be implemented statewide, this will result in small providers benefiting also from the delay.

## RURAL AREA FLEXIBILITY ANALYSIS

### Effect on Rural Areas:

The proposed amendments to continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) due to the delay of the update of the cost base year for the acute hospital inpatient rates and the additional reimbursement for new teaching hospitals applies to all hospitals throughout the state, including those located in rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the 2010 United States Decennial Census data (<http://2010.census.gov>).

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

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

Albany

Monroe

Orange

Broome  
Dutchess  
Erie

Niagara  
Oneida  
Onondaga

Saratoga  
Suffolk

**Compliance Requirements:**

No new reporting, record keeping, or other compliance requirements are being imposed as a result of the proposed regulation.

**Professional Services:**

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

**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 regulation provides for the continuation of the 2013 SIWs and ALOS due to the delay of the update of the cost base year which will assist hospitals with budgeting since there will be no retroactive effect on providers. In addition, reimbursement for new teaching hospitals will assist providers with the cost of the new teaching program.

**Rural Area Participation:**

The delay and the opportunity for additional reimbursement for new teaching hospitals applies to all New York State hospitals.

## **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. The proposed amendments continue the utilization of the 2013 Service Intensity Weights (SIWs) and average length-of-stay (ALOS) due to the delay of the implementation of the updated cost base year in the acute hospital inpatient rates; provide for an appeal mechanism for new teaching hospitals; and expand the definition of the downstate region for out-of-state providers. The continuation of the 2013 SIWs and ALOS due to the delay will assist hospitals with budgeting as there will be no retroactive effect on providers. In addition, new teaching hospitals will be reimbursed for the additional teaching costs. Further, the revision to the definition of the downstate region will provide out-of-state hospitals, which are in cities which are comparable to New York State's downstate providers, with more appropriate reimbursement.