

## Inpatient Rate for Language Assistance Services

Effective date: 10/7/15

Pursuant to the authority vested in the Commissioner of Health by Section 2807-c(35) of the Public Health Law, Subpart 86-1 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 a Notice of Adoption in the New York State Register, to read as follows:

Subpart 86-1 of title 10 NYCRR is amended by adding a new section 86-1.45 to read as follows:

86-1.45 - Reimbursement for language assistance services in hospital inpatient settings. For hospital inpatient services, in addition to the inpatient rates of payment computed in accordance with this Subpart, a separately billable rate of payment shall be available for providing language assistance services, if applicable, in accordance with the following:

(a) A discrete rate of payment for language interpretation services provided to patients with limited English proficiency (LEP) and communication services provided for patients who are deaf and hard of hearing will be established as follows:

- (1) Payment will be established on a per unit basis with the unit of payment determined based on the number of minutes of language assistance service provided.
- (2) A maximum of two billable units of language assistance services will be allowable per patient per day with the billable units defined as follows:
  - i) 1<sup>st</sup> billable unit – for encounters providing up to and including the first 22 minutes of language assistance service.
  - ii) 2<sup>nd</sup> billable unit – for encounters providing additional minutes (23+) beyond the initial 22 minutes of language assistance services during the given patient day.

(b) The rate of payment will be established at \$11.00 per unit of language assistance service provided, with a maximum allowable payment per inpatient day of care of \$22.00.

(c) To be reimbursable, the language assistance service must be provided by an independent third party, a dedicated hospital employee or a third party vendor (e.g., telephonic interpretation service) whose sole function is to provide interpretation services for individuals with LEP and communication services for people who are deaf and hard of hearing.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

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

To implement rebasing of hospital inpatient rates and effective for rate periods on and after December 1, 2009, the Legislature authorized the Commissioner to promulgate regulations to establish methodologies for the computation of general hospital inpatient rates based on more current base year costs. Rebasing was intended to establish payment rates that reflect current hospital operations and provide fair compensation to providers for the costs they presently incur. Effective since September 2006, Patients' Rights regulations enacted under Section 405.7(a)(7) of Title 10 (Health) NYCRR have required hospitals statewide to develop a Language Assistance Program (LAP) at their facility to ensure meaningful access to the hospital's services and reasonable accommodation to all patients who require language assistance. The Medicaid Redesign Team (MRT) Health Disparities Workgroup recommended that Medicaid rates of payment be adjusted to reimburse for such LAP services as LAP service costs are not reflected in current inpatient payment rates. The proposed amendment allows the Commissioner to

reimburse providers for the LAP service costs they incur in hospital inpatient care settings.

Accordingly, Subpart 86-1 of Title 10 (Health) NYCRR will be amended by adding a new section 86-1.45 to establish a discrete hospital inpatient rate and payment methodology to reimburse for the costs of providing language interpretation services to patients with limited English proficiency (LEP) and communication services for patients who are deaf and hard of hearing.

**Needs and Benefits:**

New York State (NYS) has a culturally and linguistically diverse population and assuring appropriate medical language communication when such individuals seek medical care is essential to maintaining access to care, lowering health care costs, and promoting better health care outcomes for all NYS residents. Hospitals must be able to effectively interpret complex medical information to LEP patients and those who have hearing related disabilities that affect their communication. The proposed regulation implements a Medicaid Redesign Team (MRT) Health Disparities Workgroup recommendation to adjust Medicaid rates of payment to reimburse for the costs of such LAP services. The additional reimbursement provided by this new payment rate is intended to compensate hospitals for the costs of providing language assistance services and provide additional resources to help enhance their LAP services, thus promoting improved quality of care while reducing health care costs overall. The regulation provides consistency for hospital inpatient care settings with ongoing implementation of language assistance service reimbursement in outpatient settings. Such outpatient

reimbursement will be included as part of the overall Ambulatory Patient Group (APG) payment, as applicable, via APG claim documentation of the HCPCS Level III code assigned for medical language interpretation. Federal reforms implemented under the Affordable Care Act will likely impact hospitals by increasing the number of such LEP and hearing disabled populations seeking medical care, making it essential for hospitals to be able to adapt to the changing demographics of their patients.

**COSTS:**

**Costs to Private Regulated Parties:**

There will be no additional costs to private regulated parties. The regulation establishes a payment rate to compensate providers for costs related to providing language interpretation services to patients with LEP and communication services to patients who are deaf and hard of hearing.

**Costs to State Government:**

The enacted state budget for SFY 2013-14 included an appropriation specific to cover the anticipated 12 month total incremental cost to the Medicaid Program for providing reimbursement for language assistance services. However, as the payments will not commence until the new regulation takes effect (upon filing) the actual expenditures in the current SFY are anticipated to be significantly less than the appropriated amount. There are no other anticipated incidental increases in State expenditures anticipated as a result of this regulation.

**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 administrative 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:**

There is no additional paperwork required of providers as a result of this proposed regulation.

**Duplication:**

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

**Alternatives:**

No significant alternatives are available. The MRT Health Disparities Workgroup collaborated with the various hospital and industry stakeholders to develop recommendations to advise the Department of Health on ways to reduce health disparities through improved language access. The enhanced reimbursement available to hospitals as a result of this proposed regulation will help them ensure that appropriate language and communication services are readily available to meet the needs of the diverse patient populations they serve.

**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 regulation establishes a new hospital inpatient payment rate. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

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**STATEMENT IN LIEU OF A  
REGULATORY FLEXIBILITY ANALYSIS  
For  
SMALL BUSINESSES AND LOCAL GOVERNMENTS**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required pursuant to Section 202-b(3)(a) of the State Administrative Procedures Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on small businesses or local governments, and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The proposed rule establishes a new hospital inpatient payment rate to reimburse hospitals for the costs of providing language interpretation services to patients with limited English proficiency and communication services for patients who are deaf and hard of hearing. In collaboration with various hospital and industry stakeholders, the State's Medicaid Redesign Team (MRT) Health Disparities Workgroup developed recommendations to advise the Department of Health on ways to reduce health disparities through improved language access. This language assistance payment rate regulation is based on the final recommendations submitted by the MRT Health Disparities Workgroup to help improve access to care throughout the state. The regulation provides hospitals with additional reimbursement specific to the provision of language assistance services of up to \$22 per inpatient day. This additional reimbursement will help ensure that appropriate language and communication services are readily available to meet the needs of the diverse patient populations they serve.

**STATEMENT IN LIEU OF A  
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis is not required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on rural areas, and will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed rule establishes a new hospital inpatient payment rate to reimburse hospitals for the costs of providing language interpretation services to patients with limited English proficiency and communication services for patients who are deaf and hard of hearing. In collaboration with various hospital and industry stakeholders, the State's Medicaid Redesign Team (MRT) Health Disparities Workgroup developed recommendations to advise the Department of Health on ways to reduce health disparities through improved language access. This language assistance payment rate regulation is based on the final recommendations submitted by the MRT Health Disparities Workgroup to help improve access to care throughout the state. The regulation provides hospitals with additional reimbursement specific to the provision of language assistance services of up to \$22 per inpatient day. This additional reimbursement will help ensure that appropriate language and communication services are readily available to meet the needs of the diverse patient populations they serve.

## **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 rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation establishes a hospital inpatient rate and payment methodology to reimburse hospitals for the costs of providing language interpretation services to patients with limited English proficiency and communication services for patients who are deaf and hard of hearing. The proposed regulation has no adverse implications for job opportunities. Rather, the additional revenue generated by hospitals as a result of the new payment rate may provide them with the financial resources they need to add Language Assistance Program staff, thus enhancing their ability to provide for language and communication assistance services.

## ASSESSMENT OF PUBLIC COMMENT

The Department proposed an amendment to Section 86-1.45 for reimbursement for language assistance in hospital inpatient settings. A comment was received from LanguageLine Solutions concerning the number of billable units and the payment by Managed Care Organizations.

LanguageLine Solutions requests the following:

- The proposed legislation provides for reimbursement for two billable units, per day, per patient. They are recommending that the maximum billable units be increased to five billable units, per day, per patient.
- The regulation only applies to Medicaid patients that are not included in a Medicaid Managed Care Organization (MCO). Since the payment by an MCO to a hospital is determined based on negotiated contracts, this could potentially mean that a hospital may be reimbursed differently between Managed Care and non-Managed Care [fee-for-service] Medicaid patients. They are recommending that a discrete level of reimbursement for the provision of language services be paid to MCOs in addition to their per capita rate.
- In addition, they are also proposing that a discrete payment be made to the hospitals by the MCO for language services based on a limited English proficient patient metric.

**RESPONSE:**

In reviewing the proposals made by LanguageLine Solutions, the two billable units was determined based on information received from NYS private sector (commercial) providers and NYS MCOs since fee-for-service data is not available. Based on this review, the proposed regulations were determined to be fair and appropriate compensation to hospitals for the costs of providing medical language interpretation services to patients in inpatient hospital settings.

In addition, Managed Care is a health care delivery system organized to manage cost, utilization and quality. Medicaid Managed Care provides for the delivery of Medicaid health benefits and additional services through contracted arrangements. Therefore, hospitals and MCOs negotiate payments which may or may not be identical to the fee-for-service payments for similar services. Since MCOs do reimburse for interpreter services within the contract provisions, the system is working as designed.

Based on the information above, a regulatory change will not be made based on LanguageLine Solutions proposals.