

Pursuant to the authority vested in the Commissioner of Health by Section 2807-c(4)(e-1) of the Public Health Law, Section 86-1.39 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:

Paragraph (2) of subdivision (e) of Section 86-1.39 is amended as follows:

(2) a rural adjustment factor of 1.2309 will be applied to the operating per diem for those hospitals designated as rural hospitals[;]. For dates of service beginning on or after July 1, 2014, rural designation shall apply to hospitals located in an upstate region, as defined in subdivision (o) of this section, with population densities of 225 persons or fewer per square mile, based on the New York State 2010 Vital Statistics table of estimated population, land area, and population density;

Subdivision (e) of section 86-1.39 is amended by amending paragraphs (5) and (6) and by adding a new paragraph (7) to read as follows:

(5) the payment methodology shall include one co-morbidity factor per stay and if more than one co-morbidity is presented, the co-morbidity that reflects the highest payment factor shall be used to adjust the per diem operating component; [and]

(6) a variable payment factor will be applied to the operating per diem for each day of the stay, with the factor for days 1 through 4 established at 1.2, the factor for days 5

through 11 established at 1.0, the factor for days 12 through 22 established at 0.96 and the factor for stays longer than 22 days established at 0.92[.]; and

(7) for dates of service beginning on or after July 1, 2014, a ten percent increase will be applied for hospitals located in an upstate region, as defined in subdivision (o) of this section.

Section 86-1.39 is amended by adding a new subdivision (o) to read as follows:

(o) For purposes of this section, the downstate region of New York State shall consist of the counties of Bronx, New York, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Dutchess, and the upstate region of New York State shall consist of all other counties.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for this regulation is contained in Section 2807-c(4)(e-1) 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:**

The legislative intent of PHL Article 28 is to provide for the protection and promotion of the health of the inhabitants of the State of New York by delivering high quality hospital inpatient psychiatric services in a safe and efficient manner at a reasonable cost.

### **Needs and Benefits:**

The Office of Mental Health has been in communication with providers who have brought forth concerns of their inability to maintain financial stability by providing behavioral health services for their region. The Department of Health, in collaboration with the Office of Mental Health, proposes this amendment in order to enhance the reimbursement mechanisms for inpatient psychiatric services. The proposed amendment will modify which counties are designated as rural, which will increase the number of providers that qualify for additional reimbursement under the rural designation. The proposed amendment will also provide a ten percent increase to the statewide base price for facilities located in the upstate region, as defined within the regulations.

This amendment will afford a cash infusion needed to sustain financial stability by the affected providers. Without these changes, providers would be unable to maintain operation of their inpatient psychiatric units, thereby forcing closure of these units and causing undue hardship within the communities where these patients reside.

**COSTS:**

**Costs to Private Regulated Parties:**

There will be no additional costs to private regulated parties.

**Costs to State Government:**

The change in reimbursement for rural designation and upstate facilities will result in an increased payment. However, these expenditures were previously allocated with the enacted 2014 / 2015 budget and, therefore, the amendment imposes no additional cost to the State.

**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:**

This rule shall take effect immediately upon publication of a Notice of Adoption in the State Register.

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**STATEMENT IN LIEU OF  
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202(b)(3)(a) of the State Administrative Procedure Act. The proposed regulations do not impose an adverse economic impact on small businesses or local governments, and they do not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

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

No rural flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed regulations do not impose an adverse impact on facilities in rural areas, and they do not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

## **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 amendment will modify the definition of rural which will result in an increase to the number of hospitals who qualify for additional reimbursement for their psychiatric unit under the rural designation. It will also provide a ten percent increase to the psychiatric unit statewide base price for hospitals that are located in an upstate region as defined within the regulations.