

Neurodegenerative Specialty Rate

Effective date: 11/2/16

Pursuant to the authority vested in the Commissioner of Health in section 2808(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

New subdivision (x) of Subpart 86-2.10 is added to read as follows:

(x) Specialized programs for residents with neurodegenerative disease providing care to patients diagnosed with Huntington's disease and amyotrophic lateral sclerosis. Facilities which have been approved to operate discrete units specifically designated for the purpose of providing care to residents with Huntington's disease and amyotrophic lateral sclerosis, as established pursuant to section 415.41 of this Title, shall have separate and distinct payment rates calculated pursuant to this section. The noncomparable component of such facilities' rates shall be determined pursuant to this section utilizing the cost report filed pursuant to section 86-2.2(e) of this Subpart.

New subparagraph (iv) of Section 86-2.40(ad)(2) is added to read as follows:

(iv) Effective 4/1/2016 a neurodegenerative specialty rate shall be established for Huntington's disease and amyotrophic lateral sclerosis. The rate shall be based on budgeted cost as submitted

by the facility and approved by the department and as issued by the department effective on the facility's first day of operation, provided, however, that such specialty facilities shall file certified cost reports reflecting such specialty facility's first twelve months of operation at an occupancy level of 90% or more. The department shall thereafter issue such facilities rates with non-capital components reflecting such cost reports and such rates shall be effective retroactive to the first day of such twelve month cost report. Nothing in this subparagraph shall be understood as exempting specialty facilities which have not yet achieved 90% occupancy from the generally applicable requirement to file annual calendar year cost reports.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

The Legislature has empowered the Department, under PHL 2808 to set Nursing Home rates, including the establishment of rates for specialty units/services. A community need has arisen for these particular services and the Department is fulfilling its statutory obligation to reimburse those services that are Medicaid eligible.

Needs and Benefits:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new subsection to 86-2.10 and 86-2.40 to provide information on the purpose of the specialty neurodegenerative disease rate and also information on how said rate shall be established.

The proposed regulation permits the Commissioner to establish Medicaid rates of payments for the neurodegenerative specialty rates which comprises of Huntington's disease and amyotrophic lateral sclerosis disease.

The neurodegenerative population will receive specialized care from trained, experienced physicians who specialize in the care of individuals with Huntington's disease and amyotrophic lateral sclerosis. The benefit of providing care for the neurodegenerative population will be the prevention of out of state placement and repatriation back to the state where support groups for families, residents and staff shall be established.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers are standard periodic reports which are already being completed by providers.

Costs to State Government:

There is a proposed increased cost to the State, which will allocate monies from the Medicaid global cap to pay for such increases. A new Medicaid rate for neurodegenerative specialty units will be established, based upon historic costs of similar services and extrapolated across additional providers and services. The total annual investment for neurodegenerative services is \$6.3 million, which results in an anticipated rate of \$115 per bed per day. The rate will be budget based according to budgets submitted by participating providers until adequate cost data is available, at which time, the Department will use actual costs for this rate.

Costs to 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.

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:

An eligible provider must submit a written proposal, including a proposed budget. If a temporary rate adjustment is approved for a provider, the provider must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

No significant alternatives are available. Any potential projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

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

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for residential health care facilities that are subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a

health care facility, for a specified period of time, as determined by the Commissioner, of up to three years.

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

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from residential health care facility cost reports, approximately 40 residential health care facilities were identified as employing fewer than 100 employees. This rule will have no direct effect on local governments.

Compliance Requirements:

Once actual costs have been established and providers moved from the budget based approach, providers will be required to submit actual costs in their cost report. No additional compliance will be required.

Professional Services:

The services of trained experienced physicians who specialize in caring for the targeted population will be required.

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 Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

Minimizing Adverse Impact:

This regulation seeks to provide needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State formed a Neurodegenerative workgroup to discuss proposed services, rates and community needs. The Neurodegenerative workgroup included members from rural areas, the hospital association and long-term care industry associations. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Further, the State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the department was provided for anyone interested in further information.

RURAL AREA FLEXIBILITY ANALYSIS

Effect on Rural Areas:

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

Once actual costs have been established and providers moved from the budget based approach, providers will be required to submit actual costs in their cost report. No additional compliance will be required.

Professional Services:

There may be the need for additional professional services 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:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

The State formed a Neurodegenerative workgroup to discuss proposed services, rates and community needs. The Neurodegenerative workgroup included members from rural areas, the hospital association and long-term care industry associations. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

JOB IMPACT STATEMENT

It is apparent, from the nature and purpose of the proposed rule, that it will not have an adverse impact on jobs or employment opportunities. In fact there will be an increase in job opportunities. The proposed regulation provides a new rate to eligible residential health care facilities that have specialized programs for residents with neurodegenerative diseases. In addition, the proposed regulation sets forth the conditions that must be met in order to receive the neurodegenerative specialty rate. The proposed regulation does not have any negative implications for job opportunities.