



JENNIFER KENT
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

DATE: December 7, 2016

ALL PLAN LETTER 16-016

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: RATE CHANGES FOR EMERGENCY AND POST-STABILIZATION SERVICES PROVIDED BY OUT-OF-NETWORK “BORDER” HOSPITALS UNDER THE DIAGNOSIS RELATED GROUP PAYMENT METHODOLOGY

PURPOSE:

The purpose of this All Plan Letter (APL) is to provide guidance to Medi-Cal managed care plans (MCPs) on changes in the Diagnosis Related Group (DRG) payment methodology used to establish reimbursement rates paid to out-of-state “border hospitals” for acute care hospital inpatient services in the Medi-Cal Fee-for-Service (FFS) system.

POLICY CHANGE

SPA 15-020

In its February 12, 2013 APL 13-004, the Department of Health Care Services (DHCS) notified MCPs of both the DRG methodology and how that methodology was to be applied to pay out-of-network hospitals for emergency and post-stabilization hospital inpatient services beginning July 1, 2013.

On September 29, 2015, the Centers for Medicare and Medicaid Services (CMS) approved State Plan Amendment (SPA) 15-020, which provides for changes to the DRG methodology as applied to the FFS rates that DHCS pays to out-of-state border hospitals for admissions on or after July 1, 2015. The term “border hospitals” as used in this APL is now defined in the State Plan pursuant to SPA 15-020 as those hospitals located outside the State of California that are within 55 miles’ driving distance from the nearest physical location at which a road crosses the California border as defined by the U.S. Geological Survey.

The SPA 15-020 changes applicable to FFS DRG rates paid to border hospitals are as follows:

1. A hospital-specific wage index shall be used to adjust the labor portion of the base price. SPA 15-020 provides that the hospital-specific wage index for a border hospital will be the same wage index that the Medicare program applies to that hospital.

2. The higher “remote rural” base price will apply to border hospitals, that meet the definition of a “Remote Rural Border Hospital” contained in SPA 15-020.
3. The cost-to-charge ratio (CCR) used to determine eligibility for outlier payments has been changed and will vary depending on whether a border hospital is located in Arizona, Nevada, or Oregon.

SPA 15-020 also provides that the 1.75 neonatal intensive care unit (NICU) surgery policy adjustor for neonate hospital admissions will apply to any border hospital that the California Children’s Services (CCS) program has approved as a Regional NICU or Community NICU that meets CCS neonatal surgery standards. As of now, no border hospital has submitted an application to CCS for approval. However, if and when the CCS program approves a border hospital as qualifying for the NICU surgery policy adjustor, the DRG website will be updated to show that the hospital is a Designated NICU, and when it became entitled to the NICU surgery policy adjustor.

In accordance with DHCS policy and DHCS/MCP contracts, MCPs must apply the SPA 15-020 changes established in the Medi-Cal FFS system to the DRG-based rates they pay to out-of-network border hospitals for acute care hospital inpatient emergency and post-stabilization services with respect to admissions on or after July 1, 2015. However, as stated in APL 13-004, MCPs may pay a lower negotiated rate agreed to by the hospital.

DRG pricing factors applicable to all border hospitals under SPA 15-020 are contained in the “SPA 15-020 Border Hospital Characteristics ...” files on the DRG website with respect to state fiscal year (SFY) 15/16 (admissions 7/1/2015 - 6/30/2016) at <http://www.dhcs.ca.gov/provgovpart/Pages/DRG-Pricing-SFY2015-16.aspx>, and with respect to SFY 16/17 (admissions 7/1/2016 - 6/30/2017) at <http://www.dhcs.ca.gov/provgovpart/Pages/DRG-Pricing-SFY2016-17.aspx>. For periods after June 30, 2017, Border Hospital Characteristics will be updated and posted in the DRG website.

Pending Federal Court Litigation: *Asante, et al. v. DHCS*

We also want to advise MCPs of pending federal court litigation that impacts the Medi-Cal fee-for-service DRG rates that DHCS pays the 19 border hospitals that are plaintiffs in that litigation. On October 12, 2016, the United States District Court for the Northern District of California entered a final judgment in the case of *Asante et al. v. California Department of Health Care Services* (Case No. 14-cv-03226-EMC). The *Asante* judgment requires DHCS to modify the Medi-Cal fee-for-service rates that it pays the 19 plaintiff border hospitals with respect to two of the DRG changes included in SPA 15-020 for admissions on or after December 21, 2015, as follows:

1. Instead of a hospital wage index pursuant to SPA 15-020, the California rural floor wage index is to be used to adjust the labor portion of the base price for the 19 plaintiff hospitals.
2. Three of the plaintiff hospitals that did not qualify as a remote rural hospital under SPA 15-020 shall receive the remote rural base price.

DHCS is appealing the *Asante* judgment. The judgment is not stayed pending appeal. Thus, DHCS is mandated by December 11, 2016, to change the Medi-Cal fee-for-service rates it pays the 19 plaintiff hospitals for admissions on or after December 21, 2015, consistent with the terms of the judgment. If DHCS prevails in its appeal and the judgment is overturned, in whole or in part, DHCS will then retroactively recalculate FFS DRG rates for the 19 plaintiff hospitals for admissions on or after December 21, 2015, based on SPA 15-020 standards to the extent not prohibited by any subsequent court judgment. DHCS will then also recoup from the 19 plaintiff hospitals any overpayments they received based on the October 12, 2016, judgment.

At this time, DHCS is not requiring MCPs to take any action based on the terms of the *Asante* judgment. However, if the *Asante* judgment is affirmed on appeal, MCPs will then be required, pursuant to DHCS policy and DHCS/MCP contract, to pay the 19 plaintiff border hospitals (assuming out-of-network) for acute care hospital inpatient emergency and post-stabilization services consistent with the FFS DRG rate changes required by the judgment for admissions on or after December 21, 2015 (unless the hospital has agreed to a negotiated lower rate). With respect to admissions on or after December 21, 2015, that were already reimbursed, MCPs will also then be required to pay the 19 plaintiff hospitals the additional money they are owed based on the FFS DRG rate changes required by the judgment.

For your information, the pricing factors applicable to the 19 plaintiffs under the *Asante* judgment are contained in the "Asante Judgment Plaintiff Hospital Characteristics ..." files on the DRG website with respect to admissions 12/21/2015 - 6/30/2016 at <http://www.dhcs.ca.gov/provgovpart/Pages/DRG-Pricing-SFY2015-16.aspx>, and with respect to admissions 7/1/2016 - 6/30/2017 at <http://www.dhcs.ca.gov/provgovpart/Pages/DRG-Pricing-SFY2016-17.aspx>. For periods after June 30, 2017, Asante Judgment Plaintiff Hospital Characteristics will be updated and posted on the DRG website, if necessary based on the final outcome of the litigation.

We will notify MCPs if the *Asante* judgment concerning DRG rates is affirmed, in whole or part, on appeal, and of the changes that MCPs will then be required to make pursuant to DHCS policy and contract with respect to the rates they pay the 19 plaintiffs for admissions on or after December 21, 2015.

All Plan Letter 16-016
Page 4

The DHCS Safety Net Financing Division (SNFD) is available to provide technical assistance and answer any questions MCPs may have about the changes for border hospitals under the DRG methodology. If you have any questions regarding this APL, please contact the SNFD, through the DRG general mailbox at drg@dhcs.ca.gov.

Sincerely,

Original Signed by Sarah Brooks

Sarah Brooks
Deputy Director
Health Care Delivery Systems