

## **Frequently Asked Questions: Federal and State Oversight of Medicaid Expenditures**

**June 4, 2013**

### **Background:**

On March 18, 2013, the Centers for Medicare and Medicaid Services (CMS) issued a State Medicaid Director's letter (SMDL #13-003) describing the mutual federal and state obligations and accountability on the part of the state and federal governments for the integrity of the Medicaid program. That letter stipulates that states are now required to submit UPL demonstrations on an annual basis. Previously this information was collected or updated only when a state was proposing an amendment to a reimbursement methodology in its Medicaid state plan. Beginning in 2013, states must submit UPL demonstrations for inpatient hospital services, outpatient hospital services, and nursing facilities. In 2014 and annually thereafter, states will be required to submit annual UPL demonstrations for the services listed above and clinics, physician services (for states that reimburse targeted physician supplemental payments), intermediate care facilities for the developmentally disabled (ICF/DD), psychiatric residential treatment facilities and institutes for mental disease (IMDs). This information is due to CMS prior to the start of a state's fiscal year, which for most states is July 1st.

### **Questions and Answers:**

1. To whom and how should states submit the annual upper payment limit (UPL) demonstrations that are due prior to the start of a state's fiscal year?

Response: The annual upper payment limit demonstrations should be submitted to the CMS Regional Office and addressed to the Associate Regional Administrator. States may submit through an email from the State Medicaid Director (or designated state official) or through a hardcopy letter that is postmarked before the start of the state's fiscal year. All supporting UPL data should be sent to CMS in electronic format regardless of whether the official submittal letter is sent as a mailed hardcopy.

2. Can a contractor that acts on behalf of the Medicaid agency submit the UPL demonstrations to CMS?

Response: No. The information must be submitted by the State Medicaid Director (or designated state official).

3. What are the consequences if a state refuses to comply with the SMDL requirements?

Response: We expect that all states will submit the information required to demonstrate compliance with the UPL requirements in accordance with the federal regulations and the SMDL. Absent a current UPL demonstration, the state will have failed to document that its payment rate methodology is consistent with statutory requirements. CMS may either initiate a

compliance action, or may disallow claimed expenditures which the state has not appropriately documented as within the UPL.

4. What Medicaid services require a UPL demonstration?

Response: The regulatory upper payment limits are described at 42 CFR Part 447 – Payment for Services. Services with applicable regulatory payment limits include:

- clinic,
- ICFs/DD,
- inpatient hospital,
- nursing facility,
- outpatient hospital,
- psychiatric residential treatment facilities,
- and institutes for mental disease.

In 2013, states must submit UPL demonstrations for:

- inpatient hospital services,
- outpatient hospital services, and
- nursing facility services.

In 2014 and annually thereafter, states will be required to submit annual UPL demonstrations for the services listed above and:

- clinic services,
- ICFs/DD services,
- psychiatric residential treatment facilities,
- institutes for mental disease, and
- other state plan services that have a limit related to a specific rate methodology (such as physician services limited to the average commercial rate).

5. Are states only required to conduct UPL demonstrations for services with approved state plan supplemental payment methodologies?

Response: An upper payment limit demonstration considers all Medicaid payments (base and supplemental). States must conduct UPL demonstrations for the applicable services described in the SMDL regardless of whether a state makes supplemental payments under the Medicaid state plan for the services.

6. Should the UPL demonstration show that Medicaid payments are below a reasonable estimate of what Medicare would pay for the prior fiscal year or on a prospective basis? For example, should the UPL for state fiscal year 2013-14 be submitted prior to June 30, 2013?

Response: State submissions should demonstrate UPL compliance within the fiscal year in which the demonstration is submitted, which is prior to the beginning of each fiscal year. For example, for states with a fiscal year starting July 1, 2013, the first UPL submissions should be submitted prior to that date, and demonstrate a reasonable estimate of Medicare payment for Medicaid payments made for the prior fiscal period July 1, 2012 – June 30, 2013 (or a payment period within the fiscal year that adheres to the state plan service payment methodology – see response #3 below). For purposes of SPA reviews, CMS will continue to expect that states demonstrate that proposed increases in provider payments comply with the UPL requirements.

7. Must UPL demonstrations be submitted by any particular date?

Response: No. The SMDL does not mandate a specific date for submittal, but requires that states submit the demonstrations each year, prior to the start of the fiscal year.

8. Should the period of time covered by the UPL demonstration be tied to the state's fiscal year?

Response: No. The SMDL does not require any particular starting point within the fiscal year for the demonstrations. This allows states the flexibility to develop UPL demonstrations that are tied to the provider payment periods described in state plan payment methodologies for each service. For instance, if a state submits a state plan amendment to update provider payments as of October 1 of each year, the state would document that the SPA changes comply with the UPL for the period 10/1-9/30 of that payment year. The UPL must represent the entire payment year. Since UPL demonstrations usually rely on historic data that is projected into a payment year, this is consistent with past practices.

9. Can a state use a UPL demonstration that was submitted within the fiscal year for purposes of demonstrating that a SPA change complies with the regulations in order to meet the SMDL requirements?

Response: Yes. A demonstration submitted within the fiscal year that is used to document that SPA methodology changes comply with the UPL requirements may be

used to satisfy the SMDL requirements as long as no subsequent changes are made to the state's provider payment methodology prior to the state's SMDL submission and CMS has reviewed and accepted the demonstration.

10. Will the state be required to submit a UPL for a service where the state pays at or less than the Medicare rates for the service?

Response: If the state's payment methodology for one of the services governed by the UPL regulations clearly describes payment at the Medicare payment rates that are in effect for each rate year and the state follows Medicare updates and adjustments to the rates, then no additional UPL data demonstration is necessary. The state simply needs to indicate this in the UPL narrative and reference the state plan payment methodology.

11. The UPL forms were labeled as "guidance." Are states required to submit the forms in response to the requirements of the March 18, 2013 SMDL? Will CMS issue guidance for the format of the submission of the UPL data demonstrations?

Response: The guidance materials are not a mandated submission format. However, the information included in the guidance materials is based on years of CMS experience in reviewing state UPL submissions and represents the policies and details that CMS expects states to address in their submissions. All states should submit a narrative description of the demonstration methodology that includes all of the relevant factors used to calculate the UPL and the supporting data sheets which are used in the calculation. The data should be presented by individual provider and in the aggregate for state government owned and operated, non-state government owned and operated and privately owned facilities. States that are unsure of how to present the narrative and data should contact the Regional Office for demonstration samples. It is our understanding that all states have experience in conducting UPL demonstrations for at least one of the services listed in the SMDL; however, we will consider issuing data templates as part of future guidance materials.

12. The SMDL indicates that the UPL demonstrations will be "for CMS review." What is the purpose of the review? If CMS has questions or concerns about the UPL demonstrations will those issues be addressed prospectively?

Response: The purpose of the review is to ensure that states' payment methodologies are in compliance with the statutory and regulatory UPL requirements on an annual basis. CMS intends to review the methodologies and supporting data based on the regulatory and policy requirements applicable to each service category that will be submitted by states. CMS has conducted the same review process as part of SPA reviews, however, it has come to light that states may not be reviewing payment methodologies for all of the services covered by the regulations on an annual basis. We have issued guidance

materials for states that need assistance in developing UPL calculations that comport with the regulations. Depending on the nature of the issue, CMS may work prospectively with states to address concerns. However, the regulatory requirements have been in place for many years and states will need to immediately address state plan payment methodologies that pay in excess of the UPL.

13. When will CMS issue reporting guidance for clinics, physician services, intermediate care facilities for the developmentally disabled, and psychiatric residential treatment facilities and institutes for mental disease?

Response: We are currently developing those guidance materials with the goal of issuing them in July 2013. We will also issue an information bulletin at the time that the documents are published so that states are aware that they are available.

14. The SMD letter indicated that states will identify the source of non-federal funding for the payment described in the UPL. However, there is no place on the provided guidance forms to report this information. Please advise.

Response: The purpose of the guidance materials is to help states understand the policies, information and level of detail expected for consideration in the UPL demonstration methodology. Most states are familiar with the funding questions that CMS has requested as part of SPA reviews. We will post the funding questions to the website in addition to the UPL guidance documents. Responses to those questions may be used to identify the source of non-federal funding for service payments described in the UPL.

15. Our state covered institutes for mental disease under the inpatient hospital and nursing facility benefit. Should we conduct a separate UPL for these facilities?

Response: No. Facilities that are licensed, covered and paid under the Medicaid state plan as inpatient hospital or nursing facilities should be included in the UPL calculation for the applicable facility definition. There is no regulatory requirement to conduct separate calculations for designated facility “types” within each of the applicable service categories.

16. The SMDL refers to private residential treatment facilities. Did the SMDL intend to refer to psychiatric residential treatment facilities?

Response: Yes. This was a drafting error in the SMDL text. The correct Medicaid service category is psychiatric residential treatment facilities.

17. Can CMS provide a list of the revenue codes that are approved to be included in the outpatient hospital UPL or conversely the revenue codes that can NOT be included?

Response: The definition of Medicaid outpatient hospital services is defined at 42 CFR 440.20 and includes “preventive, diagnostic, therapeutic, rehabilitative, or palliative services.” To date, CMS has not published a list of revenue codes that must be included or excluded from the service category under Medicaid. States generally define the services limitations for outpatient hospital services in the Medicaid state plan and issue guidance to providers on billable codes and associated payments through provider manuals and other Medicaid resources. Generally, the outpatient hospital benefit pays for services and costs associated with the licensed outpatient hospital facility in which an individual receives care and our understanding is that the overall scope of services may vary by state depending on the standards and criteria developed by state licensing boards.

18. For states that use a payment methodology that is based on Medicare’s outpatient prospective payment system bundling guidelines, some claim lines for covered items and services are not individually “paid,” but will be included in the covered charge total. In these instances, can CMS verify that the outpatient hospital UPL may include all other hospital outpatient services that are:
  - A. Claimed as outpatient services on the 837 Institutional claim format or UB04 form;
  - B. Generated by outpatient departments of the hospital or provider-based entities; and
  - C. Derived from paid claims reported through the MMIS.

Response: CMS confirms that the conditions described in this question are generally consistent with the UPL demonstration policies. We note that the Medicaid state plan should comprehensively describe the coverage and payment policies that a state uses to pay outpatient hospital providers and that billing policies and provider definitions should be universal for all qualified providers.