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State/Territory Name: New Mexico

State Plan Amendment (SPA) #: 12-06B

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Additional Companion letter
- 3) CMS 179 Form/Summary Form
- 4) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Dallas Regional Office
1301 Young Street, Suite 833
Dallas, Texas 75202



DIVISION OF MEDICAID & CHILDREN'S HEALTH - REGION VI

June 19, 2014

Ms. Julie Weinberg, Director
Medical Assistance Division
New Mexico Department of Human Services
P.O. Box 2348
Santa Fe, New Mexico 87504

Dear Ms. Weinberg:

We have reviewed the proposed amendment to your Medicaid State Plan submitted under Transmittal Number (TN) 12-06(B). With the approval of TN 12-06(B), the Centers for Medicare and Medicaid Services (CMS) has reviewed and approved the reorganization and revision of those payment and reimbursement pages which presented companion issues to the State's proposed Alternative Benefit Program (ABP).

As previously communicated to the State, CMS is issuing a companion letter in conjunction with our approval of SPA 12-06B in which we request the State to clarify its proposed state plan language to clearly indicate how often the supplemental payments are being made; and that the Average Commercial Rate (ACR) will be recalculated annually in accordance with State Medicaid Director Letter 13-03 (SMDL 13-03). Please be mindful of the timeframes referenced in the companion letter, and submit your response to CMS in accordance with the stated deadline.

TN 12-06(B) is approved with an effective date of January 1, 2014, as requested. A signed and dated copy of the TN 12-06(B) summary is enclosed, along with the approved plan pages and their attachments.

If you have any questions, please contact Stacey Shuman at (214) 767-6479.

Sincerely,

A solid black rectangular box used to redact the signature of the sender.

Bill Brooks
Associate Regional Administrator
Division of Medicaid & Children's Health

Enclosures

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DIVISION OF MEDICAID & CHILDREN'S HEALTH - REGION VI

June 19, 2014

Ms. Julie Weinberg, Director
Medical Assistance Division
New Mexico Department of Human Services
P.O. Box 2348
Santa Fe, New Mexico 87504

Dear Ms. Weinberg:

This letter is being sent as a companion to our approval of New Mexico Transmittal Number (TN) 12-06(B). The Centers for Medicare and Medicaid Services (CMS) is concerned that the proposed language regarding the calculations of the Average Commercial Rate (ACR) and the Upper Payment Limit (UPL) for targeted physician supplemental payments does not communicate specifically the frequency in which these calculations will be made or paid.

In order to ensure compliance with current regulations and policy as stated in State Medicaid Director Letter (SMDL) 13-03, CMS requests the following actions:

- CMS requests the State clarify the language in those pages of TN 12-06(B) that relate to physician supplemental payments to clearly indicate how often the supplemental payments are being made.
- CMS also requests that language be added that ensures the ACR will be recalculated annually.
- CSM requests that, in accordance with SMDL 13-03, the State provide assurances that a UPL demonstration will be submitted annually for review and approval.

The State has 90 days from the date of this letter to address the issues described above. Within that period the State may submit SPAs to address the inconsistencies or submit a corrective action plan describing in detail how the State will resolve the issues identified above in a timely manner. Failure to respond will result in the initiation of a formal compliance process. During the 90 days, CMS will provide any required technical assistance.



If you have any questions, please contact Stacey Shuman at (214) 767-6479.

Sincerely,

A solid black rectangular box used to redact the signature of the sender.

Bill Brooks
Associate Regional Administrator
Division of Medicaid & Children's Health

Enclosures

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 12-06(B)	2. STATE New Mexico
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
FOR: HEALTH CARE FINANCING ADMINISTRATION		4. PROPOSED EFFECTIVE DATE January 1, 2014	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES			
5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR 447, 42 CFR 441, 42 CFR 440		7. FEDERAL BUDGET IMPACT: for FFY 2014: \$0 for FFY 2015: \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-B, pages 1, 2, 3, 3a, 3b, 4, pages 10-14 (all amended), page 14a (deleted). State Supplement A to Attachment 3.1A; pages 6, 7, 8, 9, 10 (all amended) and page 21e (new).		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.19-B: page 1, supersedes page 1 TN 05-01 and page 3ab TN 06-07; page 2, supersedes TN 90-15; page 3, supersedes page 2a TN 96-03 and 3a TN 06-07; page 3a, supersedes page 2b TN 90-15; page 3b supersedes page 3 TN 90-15; page 4 supersedes page 3b TN 05-01; pages 10-14 supersedes pages 10-14 TN 97-01. Page 14a is deleted. State Supplement A to Attachment 3.1A: page 6, supersedes page 6 TN 89-10; page 7, supersedes page 7, TN 89-10; page 8, supersedes page 8 TN 93-28; page 9, supersedes page 9, TN 10-08; page 10, supersedes page 10 TN 90-22; page 21e, supersedes none, new page.	
10. SUBJECT OF AMENDMENT: Reorganization of Attachment 4.19B (Reimbursement), Companion Page Issues and Payment for Alternative Benefit Plan Services			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL		X OTHER, AS SPECIFIED: Authority Delegated to the Medicaid Director.	
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: Julie B. Weinberg, Director Medical Assistance Division P.O. Box 2348 Santa Fe, NM 87504 - 2348	
13. TYPED NAME: Julie B. Weinberg			
14. TITLE: Director, Medical Assistance Division			
15. DATE SUBMITTED: March 31, 2014 Revised: 6/4/14; 6/12/14			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: 3 March, 2014		18. DATE APPROVED: 19 June, 2014	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: 1 January, 2014		20. SIGNATURE OF REGIONAL OFFICIAL: 	
21. TYPED NAME: Bill Brooks		22. TITLE: Associate Regional Administrator Division of Medicaid and Children's Health	
23. REMARKS:			

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: NEW MEXICO

Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy

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Item 4c. Family planning services and supplies for individuals of child bearing age.

- a. The New Mexico Medical Assistance program covers sterilizations including non-emergency and elective sterilizations only when all the requirements of 42 CFR 441 Subpart F are met.
- b. A hysterectomy requires an acknowledgement of the sterilization results of the hysterectomy to be signed by the recipient or her representative prior to the operation.

Item 5 Physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

- a. Coverage does not include the services of assistant surgeons furnished in a teaching hospital where there is a resident available to perform the services unless exceptional medical circumstances exist.
- b. Osteo-manipulative therapy is limited to 3 manipulations per month regardless of the area or areas manipulated, unless authorized as medically necessary.

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Effective Date 1/1/14

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- c. Coverage of experimental procedures is restricted to heart, liver, and heart-lung transplants. Experimental procedures and services related to experimental procedures, including but not limited to hospitalization, anesthesiology, laboratory tests and x-ray, are covered on a limited basis with prior approval when anticipated to positively affect the recipient's outcome.

- d. Cosmetic surgery performed for aesthetic purposes only are not covered.

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- e. Reimbursement for induced abortions is provided only when the physician certifies that the pregnancy was a result of rape or incest or the woman suffers from a physical disorder, injury or illness, including a life-endangering physical condition cause or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed.

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Item 6a Podiatrists' Services

- a. Medicaid coverage is limited to the podiatrists' scope of practice as defined by state law.
- b. Foot care services ordinarily considered to be routine are covered only if medically necessary due to the medical condition of the recipient.
- c. Certain procedures are to be performed in the office, clinic or as an outpatient institutional services as an alternative to hospitalization.
- d. Services directed toward the care or correction of a flat foot condition are not covered.
- e. Orthopedic shoes and other supportive devices for the feet are not covered. The exclusion of orthopedic shoes does not apply to such a shoe, however, if it is an integral part of a leg brace.
- f. Surgical or non-surgical treatments undertaken for the sole purpose of correcting a subluxated structure in the foot as an isolated entity are no covered unless documented to be medically necessary. Surgical correction of a subluxated foot structure that is an integral part of the treatment for foot pathology is covered if medically necessary based on the medical condition of the recipient.

Item 6b Optometrists' Services

Orthoptic assessment and treatment are no covered by the New Mexico Medical Assistance Program.

Routine vision exams are allowed only once in a 36-month period except as provided as an EPSDT service or the medical condition of the client requires more frequent examination, treatment or follow up.

Item 6d Other Practitioner' Services

I. Behavioral Health Practitioners:

- Licensed behavioral health practitioners include: Psychologists, Licensed Professional Clinical Counselors, Licensed Marriage & Family Therapists, School Certified Psychologists, Psychiatric Clinical Nurse Specialists, and Licensed Independent Social Workers.
- Licensed non-independent behavioral health practitioners include: Licensed Master's Level Social Workers, Master's Level Licensed Counselors and other behavioral health practitioners licensed under state law at a licensed community mental health center (CMHC), a certified core service agency (CSA), a federally qualified health center (FQHC) or a tribal 638 compact facility.

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a. The following services are not benefits of the program:

1. Hypnotherapy
2. Biofeedback
3. Conditions where a reasonable prognosis does not exist.
4. Social maladjustments without manifesting psychiatric disorders, including occupational maladjustment, marital maladjustment, sexual dysfunction, and personality disorders.

b. Coverage of psychiatric or psychological services are allowed only for services in which an eligible provider to patient relationship exists.

II. Licensed Midwife Services

Services are limited to those within their scope of practice as authorized by state law.

III. Certified Nurse Anesthetist's and Anesthesiology Assistant's Services

Anesthesia services, physician directed and non-physician directed, provided during a surgical procedure covered under the state plan are a benefit of the Medicaid program.

IV. Other Certified Nurse Practitioners

Other Certified Nurse Practitioner services are covered regardless of the practitioner's specialty. Surgical procedures are not a benefit of the program when they are not within the practitioner's scope under state law.

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Item 17 Nurse Midwife Services

Nurse midwives participating in the Medicaid Program must be licensed by the Board of Nurses as registered nurses and be registered with the Health Services Division of the Department of Health as certified nurse midwives. Services are limited to those within the scope of practice authorized by state law.

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Fee Schedule for Professional Services

Except as otherwise provided in this state plan, payment to providers on a fee for service basis is limited to the lesser of the actual charge or the fee schedule established by the Department.

There is no differentiation between governmental and non-governmental providers with regard to reimbursement for the same services. The fees are available in a published fee schedule, except as otherwise indicated.

A group practice or other legal entity including a licensed treatment and diagnostic center is reimbursed at the rate payable to the individual performing physician or provider.

Reimbursement for physician services furnished in hospital outpatient settings that are also ordinarily furnished in a physician's office is determined by using the Department's fee schedule for each professional service and multiplying the allowed amount by .60. This reimbursement methodology is applicable only to a physician's professional services in hospital outpatient settings (i.e., a hospital clinic, hospital office, the outpatient department), as identified by Medicare.

Payment for the professional component of a radiology service performed in an inpatient, outpatient or office setting will not exceed 40 percent of the allowed amount payable for the complete procedure in an office setting. Nuclear medicine, radiation oncology, CT scans, and arteriogram are excluded from this limitation.

Supplemental Payments will be made in addition to payments otherwise provided under the state plan to physicians, dentists and mental health professionals who qualify for such payments under the criteria outlined below in part (a) of this section. The payment methodology for establishing and making the supplemental payments is provided below in parts (b) and (c) of this section. The average commercial rate is updated quarterly.

- a. To qualify for a supplemental payment under this section, the provider must meet the following criteria.
 - i. Be a licensed physician, dentist or mental health professional enrolled in the New Mexico Medicaid program; and
 - ii. Be a member of a practice plan under contract to provide professional services at a state-owned academic medical center as determined by the Department.
- b. For providers qualifying under part (a) of this section, a quarterly supplemental payment will be made equal to the difference between Medicaid payments otherwise made to these providers and the average rate paid for the services by commercial insurers.

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The average commercial rates are determined by:

- i. Calculating a commercial payment to charge ratio for all services paid to the eligible providers by commercial insurers using the providers' claims-specific data from the most currently available fiscal year period.
 - ii. Multiplying the Medicaid charges by the commercial payment to charge ratio to establish the estimated commercial payments to be made for these services; and
 - iii. Subtracting the interim Medicaid payments already made for these services to establish the supplemental payment amount.
- c. Providers eligible under Part (a) of this section will be paid on an interim claims-specific basis through the Department's claims processing system using the methodology outlined elsewhere in this state plan. The supplemental payment, which represents final payment for services, will be made on a quarterly basis subject to available claims data.

A. Medical and Dental Services

Medical and dental services are reimbursed on a fee schedule basis and include physicians, dentists, radiologists, and radiological facilities, licensed treatment and diagnostic centers and family planning clinics, podiatrists, optometrists, certified nurse midwives and certified nurse practitioners working under the direction of a physician.

Preventive services provided to alternative benefit plan (ABP) recipients not otherwise covered under standard Medicaid benefits are also reimbursed using this methodology including annual preventive care physicals, expanded nutritional and dietary counseling, and expanded skin cancer and tobacco use counseling. Electroconvulsive therapy services provided to ABP recipients not otherwise covered under standard Medicaid benefits are paid at the Medicare fee schedule rate.

Services rendered under the supervision of one of the above providers are paid at the fee schedule rate for the supervising provider when the service is performed by one of the following: a dietician; clinical pharmacist; physician assistant; dental hygienist; nurse; certified nurse practitioner; or, clinical nurse specialist.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the agency's website for the New Mexico Human Services Department, Medical Assistance Division, Providers, under Fee for Service, and then under Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

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B. Other Practitioners Services

1. Behavioral health professional services are reimbursed on a fee schedule basis applicable to psychologists, counselors, therapists, licensed alcohol and drug abuse counselors, behavioral health agencies, licensed independent social workers and psychiatric clinical nurse specialists.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

Non-independent behavioral health practitioners who are required by state law to be supervised are not paid directly for their services. Rather, payment is made to the supervising practitioner, the appropriate group, or licensed treatment and diagnostic center or agency to which the behavioral health worker belongs.

2. Independently practicing certified Nurse Practitioners and Clinical Nurse Specialists are reimbursed at 90% of the physician fee schedule as described in Item I. A of Attachment 4.19 B, including preventive services for alternative benefit plan recipients. Otherwise, these providers practicing under the direction of a physician, physician extenders including pharmacist clinicians, physician assistants, and nurses all performing within their scope of practice as defined by state law and meeting all requirements under state law related to supervision, and pharmacists certified for prescribing and vaccine administration, are paid according to the physician fee schedule.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

3. Certified nurse anesthetists and anesthesiology assistants are reimbursed at a rate per anesthesia unit for the procedure and for units of time for medically directed and non-medically directed services.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
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4. Licensed Midwives (Lay Midwives): Payments to licensed midwives are made at 77% of the physician fee schedule as described in Item I. A of Attachment 4.19 B for global delivery codes; payments for other codes are made at 100% of the physician fee schedule. .

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

C. Other Services

1. Ambulatory Surgical Centers Services

Free standing ambulatory surgical centers are paid at the Medicare fee schedule. For procedures not covered by Medicare, the Department establishes a fee schedule amount equivalent to the amount allowed for procedure of similar complexity.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the agency's website for the New Mexico Human Services Department, Medical Assistance Division, Providers, under Fee for Service, and then under Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

2. Renal Dialysis Facilities

Renal dialysis facilities are paid at the Medicare fee schedule. For procedures not covered by Medicare, the Department establishes a fee schedule amount equivalent to the amount allowed for procedure of similar complexity.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

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D. Physical Therapy, Occupational Therapy and Services for Individuals with Speech, Hearing, and Language Disorders

1. Physical therapy, occupation therapy, and speech and language pathology services (including audiologists) are reimbursed on a fee schedule basis. Habilitation services for ABP recipients are also reimbursed using this methodology.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

2. Physical therapy, occupational therapy and speech and language pathology services provided by a therapy assistant are reimbursed on a fee schedule basis. Habilitation services for ABP recipients are also reimbursed using this methodology.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

E. Special rehabilitation services (Family Infant Toddler program early intervention services)

Special rehabilitation services (Family Infant Toddler program early intervention services) are reimbursed on a fee schedule basis.

The agency's fee schedule rates were set as of March 31, 2014, and are effective for services provided on or after that date. All rates and any updates or periodic adjustments to the fee schedule are published on the New Mexico Human Services Department website under Providers > Fee for Service > Fee Schedules, at: <http://www.hsd.state.nm.us/providers/fee-schedules.aspx> Notice of changes to rates will be made as required by 42 CFR 447.205.

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II. Payment for prescribed drugs.

For the Medicaid Fee- For-Service Program, the Department reimburses the lesser of the computed price or the usual and customary charge. This pricing methodology does not apply to drug items reimbursed under the Section 1915(b) Waiver for Managed Care.

a. **Computed Price** – The computed price is defined as the allowed cost of the drug plus a dispensing fee established by the department. The allowed cost is the lower of the following:

1. **State Allowed Costs (SAC)** – State allowed costs are established after (1) assuring availability of FDA A-rated therapeutically equivalent drug using information available from the FDA and from the American Society of Hospital Pharmacists on drug shortages; and (2) determining the typical package size used. SAC amounts will be calculated at 150% of the lowest cost product (from among Medicare reimbursement prices when available, manufacturer prices, wholesaler prices, and invoice prices) and will be at least 20% above the second lowest cost.

This calculated amount may be lowered as follows: (1) To 60% of the average price of all available therapeutically equivalent multi-source drug products, but not below the cost for which an item is determined to be consistently and readily available from local wholesale sources in the state; or (2) When 2 or more therapeutically equivalent multi-source drug products are determined to be consistently and readily available from local wholesale sources within the state, the SAC may be lowered to the price at which the product is consistently and readily available.

SAC reimbursement does not apply when a physician writes in his or her own handwriting “brand medically necessary” on the prescription. This constitutes physician certification that substitution of another product does not apply.

In establishing the State Allowed Cost, the New Mexico Medicaid Program does not exceed, in the aggregated, payment levels established by CMS for multiple source and other drugs as required by 42 CFR 447.331 and 42 CFR 447.332.

2. **Estimated Acquisition Cost: (EAC)** -
The EAC is established using the State Maximum Allowable Cost (SMAC), and the pricing with most closely approximates published Average Wholesale Prices less 14%; which are the Suggested Wholesale Price less 14% (SWP-14%); the Wholesale Net Unit price plus 6% (WNU+6%); the direct price plus 6% (DIR + 6%) when applicable.
3. **Federal Upper Limit (FUL)** – FUL is a federal maximum amount established by CMS. The FUL is not used during periods of time when CMS is not reviewing and establishing FUL’s.

FUL reimbursement does not apply when a physician writes in his or her own handwriting “brand medically necessary” on the prescription. This constitutes physician certification that the substitution of another product does not apply.

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