



JENNIFER KENT
DIRECTOR

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



GAVIN NEWSOM
GOVERNOR

DATE: June 18, 2019

ALL PLAN LETTER 19-008
SUPERSEDES 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: OUTCOME OF FEDERAL COURT LITIGATION REJECTING A CHALLENGE TO STATE PLAN AMENDMENT 15-020.

PURPOSE:

The purpose of this All Plan Letter (APL) is to provide guidance to Medi-Cal managed care health plans (MCPs) on changes in the Diagnosis Related Group (DRG) payment methodology used to establish reimbursement rates paid to out-of-network border hospitals, as defined in the State Plan, for acute care hospital inpatient services in the Medi-Cal Fee-for-Service (FFS) system. Additionally, this APL provides notice to MCPs that the Federal Court rejected a challenge to the validity of the changes in the DRG payment methodology under State Plan Amendment (SPA) 15-020. With the lawsuit now resolved, DRG payment rates remain effective as approved under SPA 15-020 and MCPs must continue to comply with SPA 15-020.¹

BACKGROUND:

Pursuant to state law, the Department of Health Care Services (DHCS) implemented a payment methodology based on DRGs, that reflects the costs and staffing levels associated with quality of care for patients in all general acute care hospitals in state and out of state, including Medicare critical access general acute care hospitals, but excluding public hospitals, psychiatric hospitals, and rehabilitation hospitals, which include alcohol and drug rehabilitation hospitals.² The DRG reimbursement methodology replaced the previous payment method for all private hospitals with admissions on or after July 1, 2013, and for non-designated public hospitals with admissions on or after January 1, 2014.

¹ SPA 15-020 is located at: <https://www.dhcs.ca.gov/provgovpart/Documents/DRG/CA-SPA-15-020-FP-AL-179-PP.pdf>.

² Welfare and Institutions Code Section 14105.28 is available at: http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=14105.28.

In APL 13-004, 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, 2013.³

On September 29, 2015, the Centers for Medicare and Medicaid Services (CMS) approved SPA 15-020, which authorized changes to the DRG methodology as applied to the FFS rates that DHCS pays to out-of-network border hospitals for patient admissions on or after July 1, 2015. The term border hospitals is 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.

On December 7, 2016, DHCS issued APL 16-016 requiring MCPs to apply the SPA 15-020 changes established in the Medi-Cal FFS system to DRG-based rates the MCP pays 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.

POLICY:

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

1. A hospital-specific wage index is used to adjust the labor portion of the base price. SPA 15-020 provides that the hospital-specific wage index for a border hospital is the same wage index that the Medicare program applies to that hospital.
2. The higher “remote rural” base price applies to border hospitals that meet the definition of a “Remote Rural Border Hospital” as defined in SPA 15-020.
3. The cost-to-charge ratio used to determine eligibility for outlier payments varies 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 applies 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 the date of this APL, no border hospitals have submitted an application to CCS for approval. However, if and when the CCS program approves a border hospital as qualifying for the NICU

³ APLs are available at the following link:
<https://www.dhcs.ca.gov/formsandpubs/Pages/MgdCarePlanPolicyLtrs.aspx>.

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.

The DRG webpage offers specific pricing information, including year-specific pricing factors applicable to all border hospitals under SPA 15-020.⁴

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

APL 16-016 advised MCPs of pending federal court litigation that impacted the Medi-Cal FFS DRG rates that DHCS paid the 19 plaintiff border hospitals in *Asante, et al. v. DHCS* (Case No. 14-cv-03226-EMC). The APL also advised MCPs that the United States District Court for the Northern District of California entered final judgement for plaintiffs on October 12, 2016. This ruling required further modification to the FFS DRG rates that DHCS paid the 19 plaintiff border hospitals under SPA 15-020 for admissions on or after December 21, 2015. Specifically, the district court ordered that the California rural floor wage index be used to adjust the labor portion of the base price for the 19 plaintiff border hospitals, and ordered that three of the plaintiff border hospitals that did not qualify as a remote rural hospital under SPA 15-020 receive the remote rural base price. APL 16-016 advised that MCPs were not required to take any action at that time based on the terms of the *Asante* judgment. The APL also indicated that MCPs would be notified whether the *Asante* judgment was affirmed on appeal.

The *Asante* judgement was not affirmed on appeal. Instead, on April 2, 2018, the United States Court of Appeals for the Ninth Circuit reversed the district's court ruling. (*Asante v. California Department of Health Care Services* (9th Cir. 2018) 886 F.3d 795.) The Ninth Circuit denied the plaintiffs' petition for rehearing, and on August 1, 2018, the district court granted DHCS' request for entry of final judgement in its favor. The *Asante* litigation is now concluded.

In light of the outcome in litigation, MCPs are not required to modify payments paid to the 19 plaintiff border hospitals for admissions on or after December 21, 2015, beyond what is required under SPA 15-020 and as herein. In accordance with DHCS policy and MCP contracts with DHCS, MCPs must continue to 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, as stated herein. However, as stated in APL 13-004 , MCPs may pay a lower negotiated rate agreed to by the hospital.

⁴ The DRG webpage is located at the following link:
<https://www.dhcs.ca.gov/provgovpart/Pages/DRG.aspx>.

MCPs are responsible for ensuring that their delegates comply with all applicable state and federal laws and regulations, contract requirements, and other DHCS guidance, including APLs and Policy Letters. These requirements must be communicated by each MCP to all delegated entities and subcontractors.

More information about the DRG program is available on the DRG webpage. If you have any questions regarding this APL, please contact the Safety Net Financing Division through the DRG general mailbox at DRG@dhcs.ca.gov.

Sincerely,

Original Signed by Nathan Nau

Nathan Nau, Chief
Managed Care Quality and Monitoring Division