



Susana Martinez, Governor  
Brent Earnest, Secretary  
Nancy Smith-Leslie, Director

March 21, 2017

The New Mexico Human Services Department (HSD) is providing this notice for the purpose of receiving public comment on proposed changes to pharmacy reimbursement to ensure that the New Mexico Medical Assistance Program payments comply with the federal Covered Outpatient Drug Rule. The federal Covered Outpatient Drug Rule (CODR) was published in the Federal Register on Monday, February 1, 2016 (Volume 81, No. 20) as a final rule to be included in 42 CFR Part 447 (refer to the web link, below).

The CODR specifies the maximum drug ingredient costs that may be paid on a Medicaid pharmacy claim. HSD has prepared a draft State Plan Amendment that specifies that the allowed ingredient cost will be calculated as the lower of the National Average Drug Acquisition Cost (NADAC), the ingredient cost reported by the provider, or any other applicable federal upper limit. The draft State Plan Amendment also specifies that if there is not a NADAC amount, the Wholesale Acquisition Cost as reported by national drug pricing services will be used. The CODR also specifies that a provider is required to report the 340-B acquisition ingredient cost for any drug item purchased at 340-B prices. A provider who dispenses any drug item purchased through the Federal Supply Schedule (FSS) or drug pricing program under 38 U.S.C. 1826, 42 U.S.C. 256b, or 42 U.S.C. 1396-8, other than the 340-B drug pricing program, must bill the actual acquisition cost as the ingredient cost of the drug item.

Additionally, the CODR requires each state Medicaid agency to review their current dispensing fee. The rule redefines the dispensing fee as a Professional Dispensing Fee to cover other professional services that the pharmacy may provide in addition to dispensing the drug item. In the draft State Plan Amendment, HSD is proposing a professional dispensing fee of \$10.30 to be used in the calculations that determine a final payment to a pharmacy. This amount is proposed after considering other state studies, examining national studies, and particularly from reviewing professional dispensing fees calculated by neighboring states. New Mexico's current dispensing fee is \$3.65.

The draft State Plan Amendment includes federally required payment limitations on Medicaid-covered drug items purchased under federal government provisions. Specifically, a provider is required to report the actual acquisition ingredient cost for any drug item purchased at 340-B prices, the Federal Supply Schedule (FSS) or drug pricing program under 38 U.S.C. 1826, 42 U.S.C. 256b, or 42 U.S.C. 1396-8.

The draft State Plan Amendment also includes new wording to clarify that: (1) drug items that are for investigational use only are not covered under the New Mexico Medical Assistance program; (2) prior to dispensing controlled substances prescribed at amounts that exceed high codes limits, the pharmacy must verify the prescription with the prescriber (otherwise, the payment for the prescription may be subject to recoupment); and (3) dispensing of controlled substances that have not been reported as required to the New Mexico Board of Pharmacy Prescription Monitoring Program are subject to recoupment.

The calculated financial impact is to the Medicaid fee-for-service (FFS) program. For implementing a professional dispensing fee of \$10.30 and implementing the required changes to the ingredient cost calculations, a decrease in payment to pharmacy providers is anticipated to be \$1.95 million annually in state and federal funds.

Following federal requirements, the effective date of these changes is April 1, 2017. If changes to the draft State Plan Amendment are required based upon comments received by the public or as requested by CMS, any claims paid on or after April 1, 2017 will be adjusted retroactively to reflect the final approval by CMS.

HSD intends to file the State Plan Amendment after the public comment period, but no later than April 25, 2017.

**OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS:** Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposal.

Draft State Plan Amendments (SPAs), may be found on the Department's website at: <http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

#### SPA 17-003 Covered Outpatient Drug Rule

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-6252.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to [madrules@state.nm.us](mailto:madrules@state.nm.us). Written, electronic and recorded comments will be given the same consideration as oral testimony. **All comments must be received no later than 5:00 p.m. MDT, April 19, 2017.** Written or e-mailed comments are preferred because they become part of the record associated with these changes.

Interested persons may address written comments to:

Human Services Department  
Office of the Secretary  
ATTN: Medical Assistance Division Public Comments  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Copies of all comments will be made available by HSD/MAD after April 25, 2017, upon request, by providing copies directly to a requestor or by making them available on the HSD/MAD website or at a location within the county of the requestor.