HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services
Reimbursement Methodology for Ambulatory Surgical Centers
Proposed Amendments: N.J.A.C. 10:66-1.5 and 5.1

Authorized By: Carole Johnson, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Agency Control Number: 18-P-05.

Proposal Number: PRN 2019-003.

Submit comments by March 8, 2019, to:

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The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing amendments to N.J.A.C. 10:66, Independent Clinic Services, addressing the payment methodology for covered services provided in an ambulatory surgical center (ASC). The proposed amendments memorialize the New Jersey Medicaid/NJ FamilyCare program's compliance with Federal rules regarding ASC reimbursement at 42 CFR Part 416, Subpart F: "Coverage, Scope of ASC Services, and Prospective Payment System for ASC Services Furnished on or After January 1, 2008."

At N.J.A.C. 10:66-1.5(a), a proposed amendment revises the phrase "Medicaid-participating and NJ FamilyCare" to "Medicaid/NJ FamilyCare" to clarify that beneficiaries found eligible for either program to receive services on a fee-for-service basis are eligible for the services described in this chapter. Corresponding amendments are proposed at N.J.A.C. 10:66-1.5(a)1, removing the words "or" and "and," as specified, so that the text reads "Medicaid/NJ FamilyCare program."

At N.J.A.C. 10:66-1.5(b), a proposed amendment revises the phrase "Medicaid-reimbursable and NJ FamilyCare fee-for-service reimbursable services" to read "Medicaid/NJ FamilyCare fee-for-service reimbursable services" to clarify that services rendered to beneficiaries eligible under either program to receive services on a fee-for-service basis are eligible for reimbursement under this chapter. Corresponding amendments are proposed at N.J.A.C. 10:66-1.5(b)1, removing the "and," so that the text reads "Medicaid/NJ FamilyCare."

At N.J.A.C. 10:66-1.5(c)2 an obsolete cross-reference is corrected to refer to the Federal regulations governing payment for services rendered in an ambulatory surgical center (ASC).

N.J.A.C. 10:66-1.5(c)2iii is proposed for deletion; this subparagraph sets forth payment rates for ASCs and ASC facility payments are now included in the payment rate determined under the Federal regulations at 42 CFR 416.167 through 416.179. The New Jersey Medicaid/NJ FamilyCare rate is set at 50 percent of the Federal Medicare rate.

At N.J.A.C. 10:66-5.1, a proposed amendment deletes the last sentence of subsection (a) and all of paragraph (a)1 and subparagraph (a)1i, which contain information related to the classification system formerly used by the Centers for Medicare and Medicaid Services (CMS).

Proposed new N.J.A.C. 10:66-5.1(c) adds a cross-reference to N.J.A.C. 10:66-1.5, the section of the chapter that contains the reimbursement policy for ambulatory surgical centers.

The Department has determined that the comment period for this notice of proposal will be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

Social Impact

During State Fiscal Year 2016, approximately 9,300 Medicaid/NJ FamilyCare clients received services in an ASC each month from approximately 150 participating providers.

The proposed amendments will have a positive social impact on Medicaid/NJ FamilyCare beneficiaries because ASC services will continue to be provided without interruption. Provider and beneficiary eligibility and scope of services provided are not being changed by the proposed amendments.

The proposed amendments will have no negative social impact on the providers because their ability to provide services will not be interrupted.

Economic Impact

During State Fiscal Year 2016, the Division of Medical Assistance and Health Services (Division) spent approximately $950,000 (State share) for fee-for-service ambulatory surgical center services rendered to Medicaid/NJ FamilyCare fee-for-service beneficiaries.

There will be no additional economic impact to the State because these services are already included in the Medicaid/NJ FamilyCare budget utilizing the methodology described above. These proposed amendments memorialize the New Jersey Medicaid/NJ FamilyCare program's compliance with Federal rules regarding ASC reimbursement at 42 CFR Part 416, Subpart F. As required by that Federal regulation, the State has been determining reimbursement for ASC services using this methodology since January 2008. Funding for these services is included in the Department's budget and the proposed amendments will not require an additional appropriation of funds.

There are no costs to providers specifically associated with these rules, beyond the costs of maintaining records adequate for billing purposes. The proposed amendments will have a positive economic impact on providers of the services covered by these rules because they will continue to be reimbursed for services rendered to eligible beneficiaries for which claims are correctly submitted to the New Jersey Medicaid/NJ FamilyCare fiscal agent.

There is no cost for ASC services to beneficiaries other than previously established applicable premiums and/or copayment amounts associated with the specific plans in which the beneficiary is enrolled. These proposed amendments do not change those amounts.

Federal Standards Statement

Sections 1902(a)(10) and 1905(a) of the Social Security Act, 42 U.S.C. §§ 1396a(a)(10) and 1396d(a), respectively, allow a state Title XIX program to provide clinic services. Section 1905(a)(9) of the Social Security Act, 42 U.S.C. § 1396d(a)9, provides a definition of clinic services. The Federal statute and regulations allow a state broad latitude in defining clinic services, including the types of clinics the state enrolls into its program, including ambulatory surgical centers.

Title XXI of the Social Security Act allowed states to establish a children's health insurance program for targeted low-income children. Section 2103 of the Social Security Act, 42 U.S.C. § 1397cc, provides broad coverage guidelines for the program. Section 2110 of the Act, 42 U.S.C. § 1397jj, allows clinic services, including ambulatory surgical center services, under the children's health insurance program.

42 CFR Part 416 contains Federal regulations addressing the provision of ambulatory surgical center services. Specifically, 42 CFR Part 416, Subpart F contains the requirements related to reimbursement for ASC services.

The Department has reviewed the Federal statutory and regulatory requirements and has determined that the proposed amendments do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

Since the proposed amendments concern the provision of services in ambulatory surgical centers to Medicaid and NJ FamilyCare beneficiaries,

the Department anticipates that the proposed amendments will not cause the generation or loss of jobs in the State of New Jersey, for either the Division or the providers.

Agriculture Industry Impact

Since the proposed amendments concern the provision of services in ambulatory surgical centers to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the proposed amendments will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendments affect only those ambulatory surgical centers that provide services to Medicaid/NJ FamilyCare beneficiaries residing in the community. Some of these providers may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments do not impose any additional recordkeeping, compliance, or reporting requirements on small businesses. All providers, regardless of size, are required to maintain sufficient records to indicate the name of the patient, dates of service, nature, and any additional information as may be required by N.J.A.C. 10:49 and N.J.S.A. 30:4D-1 et seq., specifically 30:4D-12.

All recordkeeping, reporting, and compliance requirements must be equally applicable to all providers regardless of business size, and the Department does not differentiate between large and small businesses in these rules, due to the need for consistent standards for provider reimbursement and quality of beneficiary care.

There should be no capital costs or ongoing compliance costs associated with the rules proposed for readoption or the proposed amendments.

Housing Affordability Impact Analysis

Since the proposed amendments concern the provision of services in ambulatory surgical centers to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the proposed amendments will have no impact on the affordability of housing in New Jersey or on the average cost of housing.

Smart Growth Development Impact Analysis

Since the proposed amendments concern the provision of services in ambulatory surgical centers to Medicaid and NJ FamilyCare beneficiaries, the Department anticipates that the proposed amendments will have no impact on smart growth or housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated the proposed rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:66-1.5 Basis for reimbursement

(a) Except as indicated at (c) through (e) below, reimbursement to independent clinics is in accordance with the maximum fee schedule indicated at N.J.A.C. 10:66-6.2 and is based on the same fees, conditions, and definitions for corresponding services governing the reimbursement of [Medicaid-participating and NJ] **Medicaid/NJ** FamilyCare fee-for-service-participating practitioners in "private" (independent) practice. Reimbursement is made directly to the clinic.

1. An independent clinic shall charge for services to all patients, except as provided by legislation. No charge will be made directly to the [Medicaid or NJ] **Medicaid/NJ** FamilyCare fee-for-service beneficiary, and the charge to the New Jersey [Medicaid and NJ] **Medicaid/NJ** FamilyCare fee-for-service program[s] may not exceed the charge by the clinic for identical services to other groups or individuals in the community.

(b) The HCPCS procedure code system, N.J.A.C. 10:66-6, refers to procedure codes and maximum fee allowances corresponding to [Medicaid-reimbursable and NJ] **Medicaid/NJ** FamilyCare fee-for-service-reimbursable services. An independent clinic may claim reimbursement for only those HCPCS procedure codes that correspond to the allowable services included in the clinic's provider enrollment approval letter, as indicated at N.J.A.C. 10:66-1.3(a).

1. If a HCPCS procedure code(s), approved for use by a specific clinic, is assigned both a specialist and non-specialist maximum fee allowance, the amount of the reimbursement will be based upon the status (specialist or non-specialist) of the individual practitioner who actually provided the billed service. To identify this practitioner, enter the [Medicaid and NJ] **Medicaid/NJ** FamilyCare fee-for-service Provider Services Number and the National Provider Identifier in the appropriate section of the claim, as indicated in the Fiscal Agent Billing Supplement, N.J.A.C. 10:66 Appendix.

(c) The basis for reimbursement of services provided in an ambulatory surgical center (ASC) is as follows:

1. (No change.)

2. For facility reimbursement, surgical procedures performed in an ASC are separated into a classification system as specified by CMS and published in the Federal Register in accordance with 42 CFR [416.65(c)] **416.167 through 416.179**, the Federal regulations governing **payment for** ASC services.

i.-ii. (No change.)

[iii. The ASC facility payment for all procedures in each group is established at a single rate, as follows:

Group	Maximum Fee Allowance
1	$195.00
2	$261.00
3	$300.00
4	$369.00
5	$421.00
6	$541.00
7	$585.00
8	$627.00
9	$794.00

Note: Should the Centers for Medicare & Medicaid Services (CMS) amend the group designation for any procedure(s), the maximum fee allowance for the newly designated group shall apply and shall not be construed as a fee increase/decrease to the affected procedure(s).]

3. (No change.)

(d)-(e) (No change.)

SUBCHAPTER 5. AMBULATORY SURGICAL CENTER (ASC)

10:66-5.1 Covered services

(a) Medicaid and NJ FamilyCare fee-for-service covered procedures in an ambulatory surgical center (ASC) are those surgical and medical procedures that appear at 42 CFR 416.166, the Federal regulations governing ASC services. [Surgical procedures performed in an ASC are separated into a classification system by the Centers for Medicare and Medicaid Services (CMS).

1. A request by an ASC to add additional surgical procedures not specifically included in one of the Medicare payment groups must be reviewed and evaluated by the Division of Medical Assistance and Health Services (New Jersey Medicaid and NJ FamilyCare fee-for-service programs).

i. If additional surgical procedures are approved, each procedure will be assigned to one of the existing Medicare payment groups.]

(b) (No change.)

(c) For reimbursement information for ASC services, see N.J.A.C. 10:66-1.5.