

**STATE OF RHODE ISLAND EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES**

**12/3/2021 PUBLIC NOTICE OF PROPOSED AMENDMENT TO THE RHODE ISLAND  
MEDICAID STATE PLAN**

In accordance Rhode Island General Laws 42-35, notice is hereby given that the Executive Office of Health and Human Services (EOHHS) proposes to make the following amendment to the Rhode Island State Plan under Title XIX of the Social Security Act:

**Outpatient Hospital Annual Review and Inflationary Increases**

On September 22, 2021 EOHHS notified the public of its intent to submit to the Centers for Medicare and Medicaid Services (CMS) a State Plan Amendment (SPA) to clarify in the Rhode Island Medicaid State Plan the current methodology used to apply the annual inflationary increase to rates for outpatient hospitals. After reviewing public comments, EOHHS has revised the proposed State Plan amendment in response to public comments and provides a revised public notice below.

In accordance with Rhode Island General Law 40-8-13.4(b)(2), EOHHS is seeking approval from the Centers for Medicare and Medicaid Services (CMS) to clarify in the Rhode Island Medicaid State Plan the current methodology used to apply the annual inflationary increase to rates for outpatient hospitals. Specifically, the clarification provides that EOHHS uses the CMS Outpatient Hospital Prospective Payment System Market Basket Update without productivity adjustment. The amendment also clarifies the annual review process.

These changes are proposed to take effect on October 1, 2021. No fiscal impact is anticipated.

This proposed amendment is accessible on the EOHHS website ([www.eohhs.ri.gov](http://www.eohhs.ri.gov)) or available in hard copy upon request (401-462-2598 or RI Relay, dial 711). Interested persons should submit data, views, or written comments by January 3, 2022 to Katy Thomas, Executive Office of Health and Human Services, 3 West Rd, Cranston, RI, 02920, or [Kathryn.Thomas@ohhs.ri.gov](mailto:Kathryn.Thomas@ohhs.ri.gov) or via phone at (401) 462-2598.

In accordance with the Rhode Island General Laws 42-35-2.8, an oral hearing will be granted on the proposed State Plan Amendment if requested by twenty-five (25) persons, an agency, or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

The Executive Office of Health and Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief, or handicap in acceptance for or provision of services or employment in its programs or activities.

**Original Signed by: Womazetta Jones, Secretary,  
Signed this 3rd day of December, 2021**

## Proposed Revisions to State Plan Pages

### METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES – OTHER TYPES OF CARE PAYMENT FOR MEDICAL AND REMEDIAL CARE AND SERVICES

1. Fee structures will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the plan at least to the extent they are available.
2. Participation in the program will be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the fee structure.
3. Payment for physician, dentist and other individual practitioner services will be equal to the lesser of the billed charge or the State's fee for that service. Fee schedules are posted on the Executive Office of Health and Human Services web site under the Providers and Partners tab:  
<http://www.eohhs.ri.gov/ProvidersPartners/GeneralInformation/ProviderDirectories/Hospitals.aspx>. All governmental and private service providers are reimbursed according to the same published fee schedule. The Medical Assistance Program rates were set as of July 1, 2017 and are effective for services on or after that date.
4. The following is a description of the payment structure by items of service.
  - a. Inpatient hospital services: as described in attachment 4.19A.
  - b. Outpatient hospital services: The Medical Assistance Program will pay for outpatient hospital services using a fee schedule approach based on, but necessarily identical to, the Medicare outpatient prospective payment system. Specific provisions are as follows:
    1. In general, payment will be by fee schedule, with the fee multiplied by the number of allowable units on the claim line. Fees will be derived as follows:

For visits, surgeries, imaging procedures, drugs, and other services where Medicare pays hospitals using Ambulatory Payment Classification (APC) groups, except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of outpatient hospital services. The agency's fee schedule rate was set as of July 1, 2019 and is effective for services provided on or after that date. All rates are published on the EOHHS website at the address listed above. For the period of July 1, 2019 through June 30, 2020 outpatient rates will be increased by 7.2%. For each state fiscal year thereafter, rates will be increased based on the change in the 'actual regulation market basket' as reflected in the CMS Outpatient Hospital Prospective Payment System Market Basket Update without productivity adjustment for the calendar year that contains the start of the current state fiscal year.~~by the most recent Centers for Medicare and Medicaid Services OPSS rate increase.~~

      - a. For physical, occupational, and speech therapy services, except as otherwise noted in the plan, state-developed fee schedule rates are the same for both governmental and private providers of outpatient hospital services. The agency's fee schedule rate was set as of July 1, 2019 and is effective for services provided on or after that date. All rates are published on the EOHHS website at the address listed above. For the period of July 1, 2019 through June 30, 2020 outpatient rates will be increased by 7.2%. For each state fiscal year thereafter, rates will be increased based on the change in the 'actual regulation market basket' -as reflected in the CMS Outpatient Hospital Prospective Payment System Market Basket Update without productivity adjustment for the calendar year that contains the start of the current state fiscal year.~~the most recent Centers for Medicare and Medicaid Services OPSS rate increase.~~
      - b. For laboratory services with dates of service on or after January 1, 2016, payment will be at the non-hospital community laboratory rate. The fees are effective for claims with a

date of service on or after January 1, 2016. The fee schedule can be found on the EOHHS website at the address listed above.

- c. For observation services, EOHHS will pay an hourly fee from the 8<sup>th</sup> to the 24<sup>th</sup> hour of observation. The agency's observation fee was set as of July 1, 2019 and is effective for services provided on or after that date. The observation fee is included in the fee schedule found on the EOHHS website at the address listed above. For the period of July 1, 2019 through June 30, outpatient rates will be increased by 7.2%. For each state fiscal year thereafter, rates will be increased by the most recent Centers for Medicare and Medicaid Services OPPS rate increase, based on the change in the "actual regulation market basket" as reflected in the CMS Outpatient Hospital Prospective Payment System Market Basket Update without productivity adjustment for the calendar year that contains the start of the current state fiscal year.
  - d. For any remaining outpatient hospital services covered by Medical Assistance, fees will be based on fees for similar services as identified elsewhere in the State plan. For unlisted services and other rare situations where no fee can be calculated, payment will be at a percentage of charges.
2. Payment by fee will be modified in the following situations:
    - a. For bilateral services as appropriately designated by the modifier 50, payment will be at 150% of the otherwise applicable amount.
    - b. For drugs covered under Section 340B of the Public Health Service Act as appropriately designated by the modifier UD, payment will be at 100% of billed charges.
  3. Certain types of services are subject to discount payment when a claim contains more than one line showing procedure codes within each type of service. The line with the highest fee will be paid at 100%, the line with the second-highest fee will be paid at 50% of the otherwise-applicable fee, the line with the third highest fee will be paid at 25% of the otherwise-applicable fee, and the fourth and all subsequent lines will be paid zero. Discounting will only apply within each type of service. For example, if a claim contains three lines for an x-ray, a CT scan, and an ultrasound, each line will be paid 100%. The seven types of service are as follows:
    - a. Significant procedures subject to discounting as designated by Medicare with APC Status "T." (In general, Medical Assistance will use the same list of procedures as Medicare, but specific exceptions may be made.)
    - b. Computed topography scans
    - c. Ultrasound
    - d. X-rays
    - e. Therapeutic radiology
    - f. Nuclear medicine scans
    - g. Magnetic Resonance Imaging
  4. Some claim lines will be packaged, that is, the line will be considered paid but with a payment of zero. Packaging will apply to lines with anesthesia and recovery room codes (regardless of procedure code), lines without procedure codes, and lines with procedure codes designated as packaged under Medicare. (In general, Medical Assistance will use the same list of packaged procedures as Medicare, but specific exceptions may be made.)
  5. Out-of-State hospitals will be reimbursed for outpatient surgery services provided to Rhode Island Medical Assistance Recipients at a rate equal to fifty-three (53%) of the out-of-state hospital's customary charge(s) for such services to Title XIX recipients in that state. The outpatient reimbursement for all other services, exclusive of laboratory, imaging, and physicians, will be sixty-four percent (64%) of the outpatient surgery rate.
  6. Payment for all outpatient services will be final, with no year-end settlement process. .
  7. Hospital outpatient claims and payments are processed through MMIS.
  8. Only hospitals and provider based entities, in accordance with 42 CFR 413.65. are reimbursed according to the outpatient hospital reimbursement methodology.

## 9. Outpatient Supplemental Payment and UPL Calculation

- a. For the outpatient services provided for the period after July 1, ~~2009-2021~~ each hospital licensed by the RI Department of Health, except those hospitals whose primary services and bed inventory are psychiatric, is paid an amount determined as follows:
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- 1) Determine the sum of ~~all-gross~~ Medicaid payments (including TPL, but excluding the cross-over claims for which Medicare is the primary payer) from Rhode Island MMIS and all other Medicaid FFS outpatient payments to hospitals made for outpatient and emergency department services provided during each hospital's fiscal year ~~ending during 2008~~, including settlements.
- 2) ~~Multiplying the result of (1) above by a percentage consistent with Medicare cost finding principles;~~ The Outpatient UPL calculation is a reasonable estimate of the amount a estimate of Medicare would pay for equivalent Medicaid services for outpatient services cost for non-government-private hospitals-owned hospitals. Specifically, a ratio of Medicare outpatient costs to Medicare outpatient charges is applied to Medicaid outpatient and emergency room charges to determine the total Medicaid UPL amount cost (the limit). ~~This is then inflated to adjust from the cost report year to the UPL year. The UPLe~~ Inflation factor is a composite factor: the Rhode Island General Assembly's inflationary adjustment enacted for the state demonstration year multiplied by the Rhode Island General Assembly's inflationary adjustment for enacted for the prior state fiscal year. The Medicaid Provider Tax cost is added to the Inflated UPL amount to determine the Adjusted Medicare UPL amount.

Except for Bradley Hospital, Medicare routine and ancillary cost information is from each provider's as-filed Medicare cost report (CMS 2552), Worksheet D, Part V, Column 5, Line 202, Part 2, Line 49 (PPS services and sub-providers)

Medicare routine and ancillary charge information is from each provider's as-filed Medicare cost report (CMS 2552), Worksheet D, Part V, Column 2, Line 202, 30-40 (PPS services and subproviders)

For Bradley Hospital, Medicare routine and ancillary charge information is from the provider's as filed Medicare cost report (2552-10), Worksheet G-2, Part I, Column II, Line 28. To determine Bradley Hospital's outpatient cost information:

- A. Identify total inpatient charges (As filed Medicare cost report 2552-10, Worksheet G-2, Part I, Column I, Line 28)
- B. Identify total outpatient charges (detailed above)
- C. Calculate total inpatient and outpatient charges (A + B)
- D. Calculate the percentage of outpatient charges to total charges (B / C)
- E. Identify total inpatient and outpatient costs from as filed Medicare Cost report 2552-20, Worksheet G-2, Part II, Column 2, Line 43.
- A-F. Calculate total amount of outpatient costs (D \* E)

The State shall use a Medicare cost report for the hospital's fiscal year beginning in the federal fiscal year two years prior to the state demonstration year. For example, a SFY 22 demonstration submitted in June 2022 (end of SFY 22, within FFY 22) would use a Medicare cost report for the hospital fiscal year beginning in FFY 20 (10/1/2019 and 1/1/2020 report start dates, both in FY 20)

- 3) Total Medicaid outpatient and emergency room payments Inflated to Demonstration Year are then subtracted from the Adjusted Medicare UPL amount to determine the UPL gap, which is the basis for the size of the outpatient supplemental payment. The UPL gap is calculated using an aggregate of the individual hospital gaps ~~for state-owned and operated, non-state owned and operated, and private~~ hospitals.

~~The outpatients UPL calculation is a reasonable estimate of the amount Medicare would pay for equivalent Medicaid services.~~

~~Cost information is from each providers Medicare cost report (CMS 2552), Worksheet D, Part V, Column 5, Line 202.~~

~~Charge information is from each providers Medicare cost report (CMS 2552), Worksheet D, Part V Columns 2, Line 202.~~

~~The UPL is trended for inflation and utilization using CPI-U: Hospital and Related Service—CMS Health Care Indicators, Table 7: Percent Change in Medical Prices, and~~

~~Because RI's UPL calculations rely on Medicare and Medicaid data from prior periods, RI trends the base data to the current demonstration rate year using the inflationary adjustments stipulated in Rhode Island General Law for the periods between the base data and the rate demonstration year. The amounts of each statutorily required inflationary adjustment occurring between the base data and UPL rate demonstration year are multiplied together to determine the total inflationary adjustment to use in RI's UPL demonstration.~~

~~3)4) The aggregate UPL gap is distributed quarterly (by the 20<sup>th</sup> of July, October, January, and April) among all eligible hospitals based on the percentage relationship of each hospital's Medicaid payments to total Medicaid payments for all non-state-owned hospitals. Eligible hospitals are actual facilities and buildings in existence in Rhode Island, that provide short-term acute outpatient care to persons who require definitive diagnosis and treatment for injury, illness, disabilities, or pregnancy s. Pay each hospital on July 20, October 20, January 20, and April 20 one quarter of the product created by multiplying the result of (1) above and (2) above.~~

- c. Payment will be made for rural health clinic services at the reasonable cost rate per visit established by the Medicare carrier. Payment for each ambulatory service, other than rural health clinic services, will be made in accordance with the rates or charges established for those services when provided in other settings.

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