
CMCS Informational Bulletin

DATE: June 24, 2016

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SUBJECT: Federal public notice and public process requirements for changes to Medicaid payment rates

The purpose of this CMCS Informational Bulletin is to summarize procedures states must follow when making changes to provider payments under the Medicaid state plan and to emphasize the importance of public notice content and timing requirements. Specific to payment changes, there are three types of procedures:

- public notice policies that pertain to all proposed changes to provider payment rates or methodologies
- public input process policies, which apply when states reduce rates or restructure payments, and are designed to obtain input related access to care
- public input process policies that are specific to changes to institutional provider payment rates

Some of these requirements are longstanding; others were codified in CMS' November 2, 2015 final rule: "Medicaid Program: Methods for Assuring Access to Covered Medicaid Services" (80 FR 67576). This rule updated public notice requirements and provided guidance on public process procedures to identify and analyze access to care concerns, among other policies. The final rule established a new transparent, data-driven process for states to document whether Medicaid payments are sufficient to enlist providers to assure beneficiary access to covered care and services consistent with section 1902(a)(30)(A) of the Social Security Act (the Act). The final rule applies to services covered under the Medicaid state plan and paid on a fee-for-service basis. Where relevant, these new requirements are noted below.

Public Notice for All Proposed Changes to Payment Rates or Methodologies

Longstanding federal regulations at 42 CFR 447.205 require states to issue public notice of proposed changes in statewide methods and standards for setting Medicaid payment rates. Public notice is necessary to inform providers and other stakeholders of any changes states intend to make to their Medicaid payment methodologies, so that providers and others do not rely on prior payment methodologies. The notice must be issued at least one day prior to the effective date of the state's proposed change. CMS' November 2015 final rule modified these requirements slightly to authorize states to issue public notice on state websites or, as was previously allowable, in newspapers and state registers.

Importantly, the final rule issued in November 2015 did not modify the requirements regarding the content states must include in the public notice, which have been in place for many years. Failure to issue proper public notice can result in states being required to re-issue notice and a delay in the effective date of the state plan amendment (SPA) implementing the proposed change. It can also result in disapproval of the SPA.

Public Input Processes Related to Access to Care

The final rule also described new requirements for provider and public input processes to inform determinations about access to care when states propose to reduce rates or restructure Medicaid payments. These new requirements, effective January 4, 2016, were established in the November 2015 final rule and are described in regulations at 42 CFR 447.204. Prior to submitting SPAs to CMS, states are required to make information available so that beneficiaries, providers and other stakeholders may provide input on beneficiary access to the affected services and the impact that the proposed payment change will have, if any, on continued service access. States are expected to obtain input from beneficiaries, providers and other stakeholders, and analyze the input to identify and address access to care concerns. States must obtain this information prior to submitting a SPA to CMS and maintain a record of the public input and how the agency responded to the input. When a state submits the SPA to CMS, the regulation requires the state to also submit a specific analysis of the information and concerns expressed in input from affected stakeholders. CMS will rely on this and other documentation submitted by the state to inform our SPA approval decisions. Failure to conduct the public processes and analyze input from beneficiaries, providers and stakeholders on the impact payment changes will have, if any, on access to care can also result in a delay of the SPA approval or disapproval of the SPA.

Public Input Processes Specific to Changes to Institutional Provider Rates

Specific public input processes pertain when states propose to change institutional provider payment methodologies. These are described in statute at section 1903(a)(13)(A) of the Act and predate the November 2015 rulemaking.¹ These public input processes are designed to give providers and other affected stakeholders an opportunity to review and comment on changes to institutional provider payment rates.

The attachment to this informational bulletin, [Summary of Public Notice and Public Process Requirements](#), provides a summary of the three above requirements.

Public Notice Content Requirements:

To meet CMS public notice requirements, states must include all of the information required by 42 CFR 447.205 in their public notice of rate changes. The public notice must identify the

¹ Section 1902(a)(13)(A) of the Act requires a public process for institutional payment rate or methodology changes. For more information see State Medicaid Director's letter dated 12/10/97: <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/SMD121097.pdf>.

specific services and/or benefits that are affected by changes in state plan methods and standards for setting payment rates. In addition, states should not rely on information referenced external to the public notice, such as state legislative websites or provider bulletins, to meet the content requirements in the regulation. The actual published notice must include all of the required content.

The public notice content requirements are described in Federal regulations:

42 CFR 447.205(c) Content of notice. The notice must –

- (1) Describe the proposed change in methods and standards;*
- (2) Give an estimate of any expected increase or decrease in annual aggregate expenditures;*
- (3) Explain why the agency is changing its methods and standards;*
- (4) Identify a local agency in each county (such as the social services agency or health department) where copies of the proposed changes are available for public review;*
- (5) Give an address where written comments may be sent and reviewed by the public; and*
- (6) If there are public hearing, give the location, date and time for hearing or tell how this information may be obtained.*

With respect to the above regulations, CMS expects states will issue public notices that:

- 1) Explicitly identify the Medicaid service(s) being affected by the proposed payment change.
- 2) Identify the dollar amount of any rate change(s) or the percent increase or decrease in the rate(s).
- 3) Explain the expected increase or decrease in annual aggregate expenditures by the benefit category or service being affected.
- 4) In instances where the changes in methods and standards are applied across benefit categories, such as across the board percentage rate increases or decreases, provide a comprehensive list of the services that will be affected by the change.
- 5) Provide all relevant information required by the regulation within the text of the public notice without reliance on websites or documents external to the public notice.

Efficiencies for Operationalizing Notices and Processes:

States may find it efficient to coordinate the implementation of these public notice and public input process requirements. States may use a single mechanism to meet all three requirements as long as:

- all of the statutory and regulatory requirements for each process are met;

- the public is notified of changes in state plan methods and standards for setting payment rates prior to the effective date of the change;
- parties interested in institutional rates have a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications; and
- beneficiaries, providers and stakeholders are able to provide input to the Medicaid agency on the impact payment changes will have on access to care before the state submits the SPA to CMS for review. These processes could include input received through: face-to-face meetings, written letters, emails, online forms, or other effective mechanisms a state uses to solicit public input.

For example, a state proposing to decrease inpatient hospital payment rates could use the state Medicaid agency's website as the source of public notice and the processes for institutional rate-setting and informing access to care. Prior to submitting the SPA to CMS, the state could issue a public notice that includes all of the information required for the notice, the proposed inpatient hospital rates, methodologies and justifications, and a state agency email box address available for stakeholders to submit comments and concerns about the rates or the effects the changes may have on beneficiary access to care. The state would need to analyze and consider the public input and republish the rates once they are finalized. The state would also need to submit its analysis of the public comments on access to care to CMS with the SPA submission. Such a process would fulfill the three requirements for notice and public process.

If states have further questions, they may contact their CMS Regional Office.

Requirement	Authority	Timing	Purpose
Public Process for Determining Institutional Rates	1903(a)(13)(A)	The state agency must allow time to publish the proposed rates, allow for review and comments, and publish the final rates.	<p>Gives interested parties a reasonable opportunity for review and comment on the proposed rates, methodologies, and justifications.</p> <p>In the case of hospitals, such rates must take into account the situation of hospitals which serve a disproportionate number of low-income patients with special needs.</p> <p>States must publish proposed and final rates, the methodologies underlying the rates, and justifications for the rates.</p>
Public Process to Inform Access to Care	1902(a)(30)(A) 42 CFR 447.204	Before the state submits the SPA to CMS for consideration.	<p>Ensures beneficiaries, providers and other affected stakeholders an opportunity to provide input on the impact that proposed payment changes will have, if any, on continued service access.</p> <p>The state should maintain a record of the public input and how it responded to such input. States must also conduct a specific analysis of the information and concerns expressed in input from affected stakeholders.</p>
Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates	1902(a)(4) 1902(a)(30) 42 CFR 447.205	At least one day before the effective date of the methodology change. Prior to CMS SPA approval.	<p>Ensures providers are aware of changes in payment methods and standards and are not relying on prior payment methodologies.</p> <p>See informational bulletin for content of notice requirements.</p>

Attachment: Summary of Public Notice and Public Process Requirements