Health Care Reform in Indian Country

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Medicaid Pharmacy Reimbursement for Tribal Programs: Potential for Using the Encounter Rate[1]

June 21, 2017

This brief seeks to provide guidance to Tribal health programs on Medicaid reimbursement for covered outpatient drugs (CODs). Specifically, this brief discusses the potential for reimbursing Indian Health Service (IHS), Tribal, and Urban Indian Organization (I/T/U) pharmacies at the encounter rate (aka the "OMB Rate" or "IHS All-Inclusive Rate").

Background

State Medicaid programs generally reimburse pharmacies for CODs based on a two-part formula consisting of the ingredient cost of a drug and a professional dispensing fee. States have the flexibility to determine reimbursement rates, consistent with applicable statutory and regulatory requirements. These reimbursement rates require approval by the federal Centers for Medicare and Medicaid Services (CMS) through the State Plan Amendment (SPA) process.

State Medicaid programs reimburse I/T/U pharmacies by a variety of methods. Some states reimburse I/T/U pharmacies as they would any other pharmacy. In other cases, states have obtained federal approval through SPAs to reimburse I/T/U pharmacies for prescriptions dispensed using the encounter rate. Reimbursing I/T/Us at the encounter rate has the potential to raise substantially more revenues for these facilities, which typically lack adequate funding. States have set different policies on the total number of encounter rate payments that can be made on a single day for a single Medicaid beneficiary (see below section titled "Opportunity for I/T/Us" for some specific examples of these policies).

Impact of New Federal Rule

CMS on February 1, 2016, issued a final rule[2] that implemented provisions of the Affordable Care Act (ACA) pertaining to Medicaid reimbursement for CODs and revised other related requirements. In response to the proposed version of the rule, Tribal organizations raised concerns about losing the encounter rate at which some states reimburse I/T/U pharmacies. In both the final version of the rule and a subsequent State Health Official (SHO) Letter,[3] CMS clarified that paying I/T/U pharmacies at the encounter rate satisfies the requirements of the rule. CMS also noted that any SPAs associated with the

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[1] This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at DonegMcD@Outlook.com.

[2] See CMS-2345-FC, "Medicaid Program; Covered Outpatient Drugs" (81 FR 5170), at https://www.gpo.gov/fdsys/pkg/FR-2016-02-01/pdf/2016-01274.pdf.

[3] See CMS, "SHO #16-001: Implementation of the Covered Outpatient Drug Final Regulation Provisions Regarding Reimbursement for Covered Outpatient Drugs in the Medicaid Program," at https://www.medicaid.gov/federal-policy-guidance/downloads/smd16001.pdf.

rule must comprehensively describe the payment methodology for reimbursing I/T/U pharmacies, including an indication of whether the state will use the encounter rate.

Opportunity for I/T/Us

As mentioned above, the new rule does not limit the ability of state Medicaid programs to reimburse I/T/U pharmacies at the encounter rate. As states move to come into compliance with the rule, I/T/U pharmacies have the opportunity to work with states in drafting and submitting SPAs to CMS that set their Medicaid reimbursements for CODs at the encounter rate. Excerpts from three states that recently approved SPAs that establish or retain a policy of reimbursing I/T/U pharmacies at the encounter rate appear below, along with a link to the full CMS approval package for each state.

- **Nebraska**: "Tribal pharmacies will be paid the federal encounter rate." [Nebraska pays one encounter rate per beneficiary per day, except when the beneficiary: 1) has different diagnoses, 2) has to return for emergency/urgent care, 3) requires pharmacy services in addition to medical/mental health services, 4) receives both medical and mental health services; the state pays I/T/U pharmacies one encounter rate per beneficiary per day.] http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/NE/NE-17-0003.pdf.

- **North Dakota**: "All Indian Health Service, tribal and urban Indian pharmacies are paid the encounter rate by ND Medicaid regardless of their method of purchasing." [North Dakota pays multiple encounter rates per beneficiary per day for multiple general service categories—which include inpatient, outpatient, pharmacy, dental, vision, and EPSDT services—as follows: 1) for different diagnoses, whether the payments are for the same general service category or different general service categories; and 2) for the same diagnosis, if the payments are for different general service categories.] http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/ND/ND-16-0011.pdf

  Utah: "Covered outpatient drugs dispensed by an IHS/Tribal facility to an IHS/Tribal member are reimbursed at the encounter rate in accordance with the Utah Medicaid Indian Health Services Provider Manual." [According to the manual, Utah pays multiple encounter rates per beneficiary per day for multiple general service categories, which include inpatient, outpatient, pharmacy, and dental services; the state pays I/T/U pharmacies one encounter rate per prescriber per day, regardless of the number of prescriptions issued by the prescriber.] http://www.medicaid.gov/State-resource-center/Medicaid-State-Plan-Amendments/Downloads/UT/UT-17-0002.pdf

The subsequent attachments include snapshots of the approved SPAs.

Attachment 1: Nebraska

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State Nebraska
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

Professional Dispensing Fees

Professional Dispensing Fee: A professional dispensing fee of $10.02 shall be assigned to each claim payment based on the lesser of methodology described below.

PRESCRIBED DRUGS (Continued)

Cost Limitations: The Nebraska Medicaid Drug Program is required to reimburse ingredient cost for covered outpatient legend and non-legend drugs at the lowest of:

Brand Drugs

a. The usual and customary charge to the public, or;
b. The National Average Drug Acquisition cost (NADAC), plus the established professional dispensing fee, or;
c. The ACA Federal Upper Limit (FUL) plus the established professional dispensing fee, or;
d. The calculated State Maximum Allowable Cost (SMAC) plus the established professional dispensing fee.

The FUL or SMAC limitations will not apply in any case where the prescribing physician certifies that a specific brand is medically necessary. In these cases, the usual and customary charge or NADAC will be the maximum allowable cost.

Generic Drugs

a. The usual and customary charge to the public, or;
b. The National Average Drug Acquisition cost (NADAC), plus the established professional dispensing fee, or;
c. The ACA Federal Upper Limit (FUL) plus the established professional dispensing fee, or;
d. The calculated State Maximum Allowable Cost (SMAC) plus the established professional dispensing fee.

Backup Ingredient Cost Benchmark

If NADAC is not available, the allowed ingredient cost shall be the lesser of Wholesale Acquisition Cost (WAC) + 0%, State Maximum Allowable Cost (SMAC) or ACA Federal Upper Limit plus the established professional dispensing fee.

Specialty Drugs

Specialty drugs shall be reimbursed at NADAC plus the established professional dispensing fee. If NADAC is not available, then the Backup Ingredient Cost Benchmark will apply.

340B Drug Pricing Program

Covered legend and non-legend drugs, including specialty drugs, purchased through the Federal

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State Nebraska
METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

Public Health Service's 340B Drug Pricing Program (340B) by covered entities that carve Medicaid into the 340B Drug Pricing Program, shall be reimbursed at the 340B actual acquisition cost, but no more than the 340B ceiling price, plus the established professional dispensing fee. A 340B contract pharmacy under contract with a 340B covered entity described in section 1927 (a)(5)(B) of the Act is not covered.

Federal Supply Schedule (FSS)
Facilities purchasing drugs through the Federal Supply Schedule (FSS) shall be reimbursed at no more than their actual acquisition cost, plus the established professional dispensing fee.

Clotting Factor

a. Pharmacies dispensing Antihemophilic Factor products will be reimbursed at the lesser of methodology plus the established professional dispensing fee. If NADAC is not available, the lesser of methodology for the allowed ingredient cost shall be the Wholesale Acquisition Cost (WAC) + 0%, ASP + 6% or ACA Federal Upper Limit.
b. Pharmacies dispensing Antihemophilic Factor products purchased through the Federal Public Health Service's 340B Drug Pricing Program (340B) by pharmacies that carve Medicaid into the 340B Drug Pricing Program shall be reimbursed at the 340B actual acquisition cost, but no more than the 340B ceiling price, plus the established professional dispensing fee.

Drugs Purchased at Nominal Price
Facilities purchasing drugs at Nominal Price (outside of 340B or FSS) shall be reimbursed by their actual acquisition cost plus the established professional dispensing fee.

Investigational Drugs
Excluded from coverage.

Tribal Rates
Tribal pharmacies will be paid the federal encounter rate.

Certified Long-Term Care
Pharmacies providing covered outpatient prescription services for Certified Long-Term Care beneficiaries will be reimbursed for ingredient cost using the lesser of methodology plus the established professional dispensing fee.

Physician Administered Drugs

a. Practitioner administered injectable medications will be reimbursed at ASP + 6% (Medicare Drug Fee Schedule); injectable medications not available on the Medicare Drug Fee Schedule will be reimbursed at WAC + 6.8%, or manual pricing based on the provider's actual acquisition cost.
b. Practitioner administered injectable medications, including specialty drugs, purchased through the 340B Program will be reimbursed at the 340B actual acquisition cost and no more than the 340B ceiling price.

Attachment 2: North Dakota

32. For prescribed drugs, including specific North Dakota Medicaid covered non-legend drugs that are prescribed by an authorized prescriber and legend drugs prescribed by an authorized prescriber, North Dakota Medicaid will reimburse at the following lesser of methodology (in all instances, the professional dispensing fee will be $12.46):

    1. The usual and customary charge to the public, or
    2. North Dakota Medicaid's established Maximum Allowable Cost (MAC) for that drug plus the professional dispensing fee (ND Medicaid's MAC is acquisition cost based and includes all types of medications, including specialty and hemophilia products), or
    3. The current National Average Drug Acquisition Cost (NADAC) for that drug plus the professional dispensing fee, or if there is no NADAC for a drug, the current wholesale acquisition cost (WAC) of that drug plus the professional dispensing fee; In compliance with 42 Code of Federal Regulations (C.F.R.) 447.512 and 447.514, reimbursement for drugs subject to Federal Upper Limits (FULs) may not exceed FULs in the aggregate.
    4. For 340B purchased drugs, the lesser of logic will include the 340B MAC pricing (ceiling price) plus the professional dispensing fee.
        a. Covered entities as described in section 1927 (a)(5)(B) of the Social Security Act are required to bill no more than their actual acquisition cost plus the professional dispensing fee.
        b. Drugs acquired through the federal 340B drug pricing program and dispensed by 340B contract pharmacies are not covered.
    5. All Indian Health Service, tribal and urban Indian pharmacies are paid the encounter rate by ND Medicaid regardless of their method of purchasing.
    6. For Federal Supply Schedule purchased drugs, their provider agreements will require them to bill at no more than their actual acquisition cost plus the professional dispensing fee.
    7. Drugs not distributed by a retail community pharmacy (such as a long-term care facility) will be reimbursed as outlined in items 1-6 above and 8-13 below in this section.
    8. Drugs not distributed by a retail community pharmacy and distributed primarily through the mail (such as specialty drugs) will be reimbursed as outlined in items 1-7 above and 9-13 below in this section since ND Medicaid's MAC is acquisition cost based and includes all types of drugs.
    9. Clotting factors from Specialty Pharmacy, Hemophilia Treatment Centers (HTC), Center of Excellence will be reimbursed as outlined in items 1-8 above and 10-13 below in this section since ND Medicaid's MAC is acquisition cost based and includes all types of drugs.

10. Drugs acquired at Nominal Price (outside of 340B or FSS) will be reimbursed at no more than the actual acquisition plus the professional dispensing fee while also using the logic as outlined in items 1-9 above and 11-13 below in this section.
11. All of the logic as outlined in items 1-10 above in this section (with the exception of the professional dispensing fee being included in the calculations) will apply to Physician Administered Drugs (no professional dispensing fee will be paid for Physician Administered Drugs).
12. Investigational drugs are paid at invoice pricing which includes the cost of the drug, the international regulatory, shipping and handling fee, and next day delivery service.
13. A fee of fifteen cents per pill will be added to the dispensing fee for the service of pill splitting. Pill splitting is entirely voluntary for the patient and the pharmacist. Pill splitting will only be permitted under the following circumstances: when Medical Services determines it is cost effective, the pill is scored for ease of splitting, and the pharmacy staff splits the pill. This fee will only be allowed for medications that have been evaluated by the state for cost-effectiveness and entered into the Point-of-Sale system.

Attachment 3: Utah

S. PRESCRIBED DRUGS

Covered outpatient drugs will be reimbursed based on an established product cost plus a professional dispensing fee. The payment for individual prescriptions shall not exceed the amount billed. The amount billed must be no more than the usual and customary charge (U&C) to the private pay patient. The following methodology is used to establish Medicaid payments:

Effective for claims adjudicated on or after April 1, 2017, except as otherwise stated in this section and in addition to a reasonable professional dispensing fee as applicable, reimbursement for brand and generic covered outpatient drugs will be as follows:

The lesser of the Utah Estimated Acquisition Cost (UEAC), Federal Upper Limit, Utah Maximum Allowable Cost (UMAC), or the Ingredient Cost Submitted.

Federal Upper Limit

The federal upper limit is the maximum allowable ingredient cost reimbursement established by the Federal government (e.g., Centers for Medicare and Medicaid Services (CMS) for selected multiple-source drugs. The aggregate cost of product payment for the drugs on the federal upper limit list will not exceed the aggregate established by the Federal government.

Utah MAC

Utah MAC is the National Average Drug Acquisition Cost (NADAC) published by the Centers for Medicare and Medicaid Services (CMS). If CMS does not publish a NADAC for a covered outpatient drug, the Maximum Allowable Cost reimbursement may be established by the State for selected drugs.

S. PRESCRIBED DRUGS (Continued)

Utah Estimated Acquisition Cost (UEAC)

The Utah EAC is the Wholesale Acquisition Cost (WAC).

Professional Dispensing Fees

The Utah Medicaid professional dispensing fees are as follows:

1. $9.99 for urban pharmacies located in Utah;

2. $10.15 for rural pharmacies located in Utah;

3. $9.99 for pharmacies located in any state other than Utah; and

4. $716.54 for hemophilia clotting factor dispensed by the contracted pharmacy and in accordance with Attachment 4.19-B, Page 22g.

Urban pharmacies are pharmacies physically located in Weber, Davis, Utah and Salt Lake counties.

Drugs Dispensed by IHS/Tribal facilities

Covered outpatient drugs dispensed by an IHS/Tribal facility to an IHS/Tribal member are reimbursed at the encounter rate in accordance with the Utah Medicaid Indian Health Services Provider Manual.

Specialty Drugs and Covered Outpatient Drugs Primarily Dispensed through the Mail

Specialty drugs and covered outpatient drugs primarily dispensed through the mail are reimbursed in the same manner as other covered outpatient drugs in accordance with the reimbursement rules of this section.

S. PRESCRIBED DRUGS (Continued)

Covered Outpatient Drugs Purchased Through the 340B Program

Covered entities that purchase covered outpatient drugs through the 340B program and used the 340B covered outpatient drugs to bill Utah Medicaid are required to submit the 340B acquisition cost on the claim and identify the medications as being purchased through the 340B by using the Submission Clarification Code = '20' or 'UD' modifier.

Payment for covered outpatient drugs purchased through the 340B program will be the lesser of the 340B acquisition cost plus a professional dispensing fee, as applicable, or the billed charges.

Payment for covered outpatient drugs not purchased through the 340B program are to be submitted, and reimbursed, in accordance with the reimbursement rules under this section.

340B covered entities may not utilize contract pharmacies to bill Utah Medicaid unless the covered entity, contract pharmacy, and State Medicaid agency have a written agreement in place to prevent duplicate discounts.

Federal Supply Schedule

Providers that purchase covered outpatient drugs through the Federal Supply Schedule (FSS) and use the covered outpatient drugs to bill Utah Medicaid are required to submit the FSS acquisition cost on the claim, unless the reimbursement is made through a bundled charge or all-inclusive encounter rate.

Payment for covered outpatient drugs purchased through the FSS will be the lesser of the FSS acquisition cost plus a professional dispensing fee, as applicable, or the billed charges.

Payment for covered outpatient drugs not purchased through the FSS are to be submitted, and reimbursed, in accordance with the reimbursement rules of this section.

Nominal Price

Providers that purchase covered outpatient drugs at Nominal Price and use the covered outpatient drug to bill Utah Medicaid are required to submit the acquisition cost on the claim.

Payment for covered outpatient drugs purchased at Nominal Price will be the lesser of the Nominal Price acquisition cost plus a professional dispensing fee, as applicable, or the billed charges.

S. PRESCRIBED DRUGS (Continued)

Covered Outpatient Drugs not Dispensed by a Retail Community Pharmacy

Covered outpatient drugs not dispensed by a retail community pharmacy are reimbursed in the same manner as other covered outpatient drugs in accordance with the reimbursement rules of this section.

Provider Administered Drugs

Covered provider administered drugs will be reimbursed according to the Average Sale Price (ASP) Drug Pricing File, published quarterly by the Centers for Medicare and Medicaid Services (CMS), for drugs that have an ASP price set by CMS.

Covered provider administered drugs for which CMS does not publish an ASP price will be reimbursed in accordance with the Utah Medicaid fee schedule published on Medicaid's Coverage and Reimbursement Code Look-up Tool.

Hemophilia Drugs

Hemophilia drugs are reimbursed in accordance with the rules of this section and the Hemophilia Disease Management program in Attachment 4.19-B, Page 22g.

Investigational Drugs

Investigational drugs are not covered by Utah Medicaid.