NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

April 30, 2013

Dear Chief Executive Officer:

As you may be aware, regulations (10 NYCRR 405.19(g)) pertaining to **observation services** were promulgated last year, effective January 11, 2012. In January of 2013 Public Health Law 2805-v was enacted. The Department is working on revised regulations to conform to the new statute and address other issues identified by hospitals over the past year.

Programmatic Guidance

While regulations are being revised, hospitals are advised that observation services may be provided under the following conditions:

- Observation services are post-stabilization services appropriate for short-term treatments, assessment, and re-assessment of those patients for whom diagnosis and a determination concerning admission, discharge, or transfer can reasonably be expected within forty-eight hours.
- At this time assignment to observation services may be made only through the Emergency Department in order to receive Medicaid Fee-for-Service reimbursement.
- Observation services may be provided for up to 48 hours.
- Observation services may be provided in:
  - A distinct unit **and/or**
  - Inpatient beds.
  - Hospitals designated as critical access hospitals or sole community hospitals may also utilize emergency department beds.
- Hospitals with existing waivers may continue to operate their approved observation units at this time.
- Hospitals with existing observation units, in compliance with current regulations – 405.19(g) – may continue to operate their observation units.
- Initiation of new distinct observation units, or renovations to existing distinct observation units, must comply with current regulations – 405.19(g) – with respect to constructions standards and submission of notification or certificate of need applications, as applicable, **EXCEPT** units do not need to be adjacent to the emergency department.

The Department continues to work on following two areas, with additional guidance to follow:

- Direct assignment to observation services via referral from community practitioners.
- Patient notification of assignment to observation.

<u>Medicaid Fee-for-Service Reimbursement Guidance</u>

Effective for dates of service May 1, 2013 or later, Medicaid payment policy and reimbursement criteria have been revised and expanded. Revisions include the change from a flat rate reimbursement to an hourly rate reimbursement. The expansion includes payment for observation services provided in inpatient “scatter” beds.

Medicaid covers observation services designated by HCPCS G0378 (Hospital observation service, per hour) which groups to Ambulatory Patient Group (APG) 450, and is subject to consolidation and bundling logic. Medicaid pays for observation services on an hourly basis for up to 48 hours. The number of hours in observation status must be coded in the units of service field of the claim line on which G0378 is coded. The appropriate CPT/HCPCS codes for all ancillary services provided the patient while in observation status should also be reported on the claim. Facilities will only be paid for observation if the length of stay in observation exceeds eight hours. If the length of stay in observation is less than 8 hours, the stay is not reimbursable by Medicaid. Nevertheless, providers should always comprehensively code all services provided during a visit/episode.

Observation services end when the patient is admitted as an inpatient or is discharged from the hospital. If the patient is admitted to inpatient status only the inpatient admission will be paid. However, the emergency room services and associated observation services charges should be included in the claim. If the patient must be transferred to another facility, the emergency room and observation services may be submitted for payment.

Note, only those hours that the patient is actually in observation may be billed with G0378. Significant procedures or high intensity ancillaries (MRI, PET scans, CT scans) will cause G0378 to package, meaning it will not be paid separately. Low level ancillaries (X-rays, laboratory tests) and drugs will not cause G0378 to package and observation will be paid separately.

The UC modifier should be added to the observation claim line if the service is being provided in a discrete observation unit (established in compliance with 10 NYCRR 405.19 (g)). Facilities will be reimbursed an enhanced hourly rate (i.e., 20 % higher) for

providing observation in designated units if they code the UC modifier. However, observation services provided in non-designated units (i.e., inpatient “scatter” beds) should be coded using G0378 without the UC modifier.   Hospitals with discreet units may utilize inpatient beds as they deem appropriate, but must code based on where the services were rendered.

Additional reimbursement information will be published in an upcoming Medicaid Update. If you have questions about Medicaid reimbursement for observation services, please contact Division of Program Development and Management at 518-473-2160.

If you have any questions on the programmatic requirements for observation services, please contact Barbara DelCogliano in this office at 518-402-1003 or blm03@health.state.ny.us.

Sincerely,

Ruth W. Leslie
Interim Director
Division of Hospitals and Diagnostic & Treatment Centers
Office of Health Systems Management