

January 18, 2002

To: Supervisor Zev Yaroslavsky  
Supervisor Gloria Molina  
Supervisor Yvonne Brathwaite Burke  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: David E. Janssen  
Chief Administrative Officer

**FEDERAL LEGISLATIVE UPDATE ON MEDICAID UPPER PAYMENT LIMIT  
RULE**

Today, the Centers for Medicare and Medicaid Services (CMS) issued a final rule which reduces the Medicaid Upper Payment Limit (UPL) for non-State government-owned or operated hospitals from 150 percent to 100 percent of what would be paid using Medicare payment principles. The final rule, which is attached, takes effect on March 19, 2002.

The Department of Health Services, Foley and Lardner (outside counsel), and my staff have reviewed the final Medicaid UPL rule, which is the same as the proposed rule, published on November 23, 2001, with one notable exception. The final rule provides that a State must have an approved State payment methodology that provides for payments to non-State facilities (including public hospitals) above 150 percent of the UPL in order to qualify for a transition period.

In today's Federal Register notice on the final UPL rule, CMS indicated that it believes that two States qualify for an eight-year transition period. Based on past statements made by CMS Administrator Thomas A. Scully, we believe that California is one of those two states. We would caution, however, that it has not yet been determined that California qualifies for a transition period. California's UPL for non-State public hospitals has not yet been calculated, and it is not clear what methodology for calculating the UPL will be acceptable to CMS and the State. If it ultimately is determined that California's approved payment methodology provides for payments below 150 percent of its UPL for non-State public hospitals, the State would not qualify for the transition period. In that

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methodology provides for payments below 150 percent of its UPL for non-state public hospitals, the State would not qualify for the transition period. In that event, the full-year impact of the lower 100 percent UPL would take effect in 2002-03 rather than 2009-10, after the transition period ends.

Congress will reconvene on January 23, 2002. Just as last year, the pursuit of legislation which would protect California from a major loss of Medicaid revenue due to the lowering of the UPL will be a top Federal legislative priority this year.

We will continue to keep you advised of any new developments.

DEJ:GK  
RT:TJ:MT:md

#### Attachment

c: Executive Officer, Board of Supervisors  
County Counsel  
All Department Heads  
Legislative Strategist