

paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the upper payment limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

3. Amend § 447.321 as follows:

a. Revise paragraphs (b) through (d).

b. Revise paragraph (e)(1)(ii).

c. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

d. Redesignate paragraph

(e)(2)(ii)(C)(8) as paragraph (e)(2)(iii).

e. Add paragraph (e)(2)(v).

f. Revise paragraph (f).

The addition and revisions read as follows:

**§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.**

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(c) *Exception—Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Public Law 93–638).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) For non-State government-owned or operated hospitals—March 19, 2002.

(2) For all other facilities—March 13, 2001.

(e) *Transition periods—\** \* \*

(1) \* \* \*

(ii) UPL stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

\* \* \* \* \*

(2) *General rules.\* \* \**

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

**Thomas A. Scully,**  
Administrator, Centers for Medicare & Medicaid Services.

Approved: January 15, 2002.

**Tommy G. Thompson,**  
Secretary.

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 199

#### [Docket RSPA–97–2995; Notice 9]

### Pipeline Drug Testing; Random Testing Rate

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of random drug testing rate.

**SUMMARY:** Each year, a minimum percentage of covered pipeline employees must be randomly tested for prohibited drugs. The percentage, either 50 percent or 25 percent, depends on the positive rate of random testing reported to RSPA in the previous year. In accordance with applicable standards, we have determined that the

positive rate of random testing reported this year for testing in calendar year 2000 was less than 1.0 percent.

Therefore, in calendar year 2002, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

**DATES:** Effective January 1, 2002, through December 31, 2002, at least 25 percent of covered employees must be randomly drug tested.

**FOR FURTHER INFORMATION CONTACT:** L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at [buck.furrow@rspa.dot.gov](mailto:buck.furrow@rspa.dot.gov).

**SUPPLEMENTARY INFORMATION:** Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly drug test all covered employees during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines “positive rate” as “the number of positive results for random drug tests \* \* \* plus the number of refusals of random tests \* \* \*, divided by the total number of random drug tests \* \* \* plus the number of refusals of random tests. \* \* \*”

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206—November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297—Nov. 3, 1997); 1999 (63 FR 58324—Oct. 30, 1998); 2000 (64 FR 66788—Nov. 30, 1999), and 2001 (65 FR 81409—Dec. 26, 2000).

Using the MIS reports received this year for drug testing done in calendar year 2000, we calculated the positive rate of random testing to be 0.6 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual

percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2002, through December 31, 2002.

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 31, 2001.

**Stacey L. Gerard,**  
*Associate Administrator for Pipeline Safety.*  
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