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Centers for Medicare & Medicaid Services

42 CFR Parts 412, 482, 485, and 489

CMS-1599 & 1455-CN3

RINs 0938-AR53 and 0938-AR73

**Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute
Care Hospitals and the Long-Term Care Hospital Prospective Payment System and
Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers;
Hospital Conditions of Participation; Payment Policies Related to Patient Status;
Corrections**

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notification of correction to tables.

SUMMARY: This document corrects technical errors in the final rules that appeared in the August 19, 2013 **Federal Register** titled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status."

EFFECTIVE DATE: This correcting document is effective on [OFR: Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2013-18956, which appeared in the August 19, 2013 **Federal**

Register (78 FR 50496) entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status" (hereinafter referred to as the FY 2014 IPPS/LTCH PPS final rule), there were a number of technical and typographical errors. Therefore, in the October 3, 2013 **Federal Register** (78 FR 61197), we published a correcting document to correct those errors. The provisions of the correcting document were effective as if they had been included in the FY 2014 IPPS/LTCH PPS final rule that appeared in the August 19, 2013 **Federal Register**. Accordingly, those corrections were effective October 1, 2013.

We have learned of an additional technical error that appeared in FY 2014 IPPS/LTCH PPS final rule. Specifically, the wage data of provider 220153 in core-based statistical area (CBSA) 44140, Springfield, MA should not have been included in the wage index data. The inclusion of this data resulted in an error in the pre-reclassified, unadjusted wage index, which is used in the IPPS, for CBSA 44140 as well as to determine the LTCH PPS wage index, which is computed using wage data from inpatient acute care hospitals without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act. Section 412.64(k) of the regulations provides for making midyear corrections to the wage index. Under this provision, we make a midyear correction to the wage index for an area only if a hospital can show that the--(1) intermediary or CMS made an error in tabulating its data; and (2) hospital could not have known about the error or did not have the opportunity to correct the error before the beginning of the Federal fiscal year (that is, October 1). A midyear correction to the

wage index is effective prospectively from the date the change is made to the wage index rather than retroactively to the beginning of the Federal fiscal year, unless several conditions are met, including the requirement, under §412.64(k)(2)(ii)(C), that CMS agreed before October 1st that the fiscal intermediary or CMS made an error in tabulating the hospital's wage data and the wage index should be corrected. CMS did not agree that there was an error in the IPPS wage index until after October 1, 2013; therefore, under the authority of §412.64(k), the effective date of this correction is prospective, [OFR: Insert date of publication in the **Federal Register**]. Furthermore, as the IPPS wage data is also used to compute the LTCH PPS wage index, these corrections will also apply prospectively to the LTCH PPS wage index as of [insert date of publication in the **Federal Register**].

II. Summary of Errors and Corrections to Tables Posted on the CMS Website

A. Errors in and Corrections to the IPPS Tables

We are correcting the errors in the following IPPS tables that are listed on 78 FR 51002 of FY 2014 IPPS/LTCH PPS final rule and are available on the Internet on the CMS Web site at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/FY2014-IPPS-Final-Rule-Home-Page.html> .

In Table 2.--Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2012; Hospital Wage Indexes for Federal Fiscal Year 2014; Hospital Average Hourly Wages for Federal Fiscal Years 2012 (2008 Wage Data), 2013 (2009 Wage Data), and 2014 (2010 Wage Data); and 3-Year Average of Hospital Average Hourly Wages. We inadvertently included the wage data of provider 220153 in CBSA

44140, Springfield, MA in the FY 2014 wage index. Therefore, we are correcting Table 2 by removing the wage data for provider 220153.

In Table 3A.--FY 2014 and 3-Year Average Hourly Wage for Acute Care Hospitals in Urban Areas by CBSA. We inadvertently included provider 220153 in the wage index of CBSA 44140. Therefore, we are correcting the FY 2014 average hourly wage and the 3-year average hourly wage for CBSA 44140, Springfield, MA by removing the wage data for provider 220153, and recomputing the FY 2014 average hourly wage and the 3-year average hourly wage for CBSA 44140.

B. Error in and Correction to a LTCH PPS Table

We are also correcting the error in the following LTCH PPS table that is listed on 78 FR 51002 of the FY 2014 IPPS/LTCH PPS final rule and is available on the Internet on the CMS Web site at [http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCare HospitalPPS/index.html](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/LongTermCareHospitalPPS/index.html).

Table 12A.—LTCH PPS Wage Index for Urban Areas for Discharges Occurring from October 1, 2013 through September 30, 2014. Due to a technical error found in the data of a provider in CBSA 44140, we are correcting the LTCH PPS wage index value for that CBSA.

III. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary,

or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correcting document does not constitute a rule that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical errors in tables posted on the CMS website but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the tables posted on the CMS website accurately reflect the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2014 IPPS/LTCH PPS final rule accurately reflects our payment methodologies, payment rates, and policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we

are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the FY 2014 IPPS/LTCH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

CMS-1599 & 1455-CN3

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

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: December 26, 2013

Oliver Potts,

Deputy Executive Secretary to the

Department,

Department of Health and Human Services.

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