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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS-1628-CN2]

RIN 0938-AS48

Medicare Program; End-Stage Renal Disease Prospective Payment System, and Quality Incentive Program; Correction

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

ACTION: Final rule, correction.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on November 6, 2015, entitled "Medicare Program; End-Stage Renal Disease Prospective Payment System, and Quality Incentive Program."

DATES: This correction is effective on [**OFR insert date of publication in Federal Register**].

FOR FURTHER INFORMATION CONTACT: CMS ESRD Payment mailbox at ESRDPayment@cms.hhs.gov, for issues related to the ESRD PPS payment provisions.

Heidi Oumarou, (410) 786-7942, for issues related to the ESRD market basket.

Tamara Garcia, (410) 786-0856, for issues related to the ESRD QIP.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2015-27928 of November 6, 2015 (80 FR 68967) (hereinafter referred to as the CY 2016 ESRD PPS final rule) there are technical and typographical errors that are discussed in the "Summary of Errors," and further identified and corrected in the "Correction of Errors" section below. The provisions in this correction notice are

effective as if they had been included in the CY 2016 ESRD PPS final rule published in the **Federal Register** on November 6, 2015.

II. Summary of Errors

On page 68968, in the FOR FURTHER INFORMATION CONTACT section we found an error in the e-mail address provided to contact us for ESRD PPS payment issues. The correct e-mail address is ESRDPayment@cms.hhs.gov. In addition, the telephone number provided for questions related to the ESRD market basket was incorrect for Heidi Oumarou. The correct telephone number is 410-786-7942.

On page 68976, we made a typographic error by including the words “case-mix” in the beginning of sentence.” On page 68986, under the heading “Body Surface Area (BSA)”, we made a typographical error in the value 1.020. We inadvertently inserted the letter “l” instead of the number “1” in that value.

On page 69044, we made a technical error in the title of Table 17--“Estimated Numerical Values for the Performance Standards for the PY 2018 ESRD QIP Clinical Measures Using the Most Recently Available Data,” by indicating that the values were estimates instead of finalized numerical values. In addition, there were errors in the achievement threshold, benchmark, and performance standard values presented in Table 17 “for Payment Year 2018 of the End-Stage Renal Disease Quality Incentive Program. Specifically, the numerical values published for the Kt/V Adult Hemodialysis, Kt/V Pediatric Hemodialysis, Standardized Readmission Ratio clinical measures, and ICH CAHPS were incorrect because we inadvertently placed the numbers in the incorrect columns.

On page 69069, in footnote 15 regarding the responsibilities of various staff, we found an error in the hyperlink to a document posted by the Bureau of Labor & Statistics.

Finally, on page 69073, after “e. Alternatives Considered,” we inadvertently did not include the subtitle “1. CY 2016 End-Stage Renal Disease” to delineate the analysis of alternatives policies considered for the ESRD PPS.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay of Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date. APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

In our view, this correcting document does not constitute rulemaking that would be subject to these requirements. This correcting document is simply correcting technical

and typographical errors in the preamble and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule, and therefore, it is unnecessary to follow the notice and comment procedure in this instance.

Even if this were a rulemaking to which the notice and comment 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 CY 2016 ESRD PPS final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for dialysis facilities to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2016 ESRD PPS final rule accurately reflects our policies as of the date they take effect and are applicable. Further, such procedures would be unnecessary, because we are not altering the payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2016 ESRD PPS final rule accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. 2015-27928 of November 6, 2015 (80 FR 68968), make the following corrections:

1. On page 68968, first column, under section "FOR FURTHER INFORMATION CONTACT:" --

- a. In line 1, the email address "CMS ESRD PAYMENT@cms.hhs.gov" is corrected to read "ESRDPAYMENT@cms.hhs.gov".

b. In lines 3 and 4, the telephone number “410-786-7342” is corrected to read “410-786-7942”.

2. On page 68976, first column, first full paragraph, line 21, remove the word “case-mix”.

3. On page 68986, second column, first paragraph under the heading “Body Surface Area (BSA),” line 5, the figure “1.020” is corrected to read “1.020”.

4. On page 69044, Table 17 is corrected to read as follows:

TABLE 17 – FINAL NUMERICAL VALUES FOR THE PERFORMANCE STANDARDS FOR THE PY 2018 ESRD QIP CLINICAL MEASURES USING THE MOST RECENTLY AVAILABLE DATA

Measure	Achievement Threshold	Benchmark	Performance Standard
Vascular Access Type			
%Fistula	53.51%	79.60%	65.94%
%Catheter	16.79%	2.59%	8.80%
Kt/V			
Adult Hemodialysis	92.88%	99.43%	97.24%
Adult Peritoneal Dialysis	75.42%	97.06%	89.47%
Pediatric Hemodialysis	81.25%	96.88%	93.94%
Pediatric Peritoneal Dialysis	43.22%	88.39%	72.60%
Hypercalcemia	3.92%	0.00%	1.19%
NHSN Bloodstream Infection SIR	1.812	0	0.861
Standardized Readmission Ratio	1.297	0.588	0.998
Standardized Transfusion Ratio	1.470	0.431	0.923
ICH CAHPS	15 th percentile of eligible facilities’ performance during CY 2015	90 th percentile of eligible facilities’ performance during CY 2015	50 th percentile of eligible facilities’ performance during CY 2015

11. On page 69069, third column , bottom of the page, footnote 15, the reference to “ <http://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm>” is corrected to read “<http://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm>”.

12. On page 69073, second column under the heading “e. Alternatives

Considered” add the sub-heading 1. CY 2016 End-Stage Renal Disease”.

CMS-1628-CN2

Dated: December 28, 2015

Madhura Valverde,

Executive Secretary to the Department,

Department of Health and Human Services.

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