



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 416 and 419

[CMS-1695-CN]

RIN 0938-AT30

### Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an error that appeared in the final rule with comment period published in the **Federal Register** on November 21, 2018, entitled "Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs." Specifically, this document corrects the public comment period end date. The corrected date is January 2, 2019.

**DATES:** Effective date: This correction is effective [Insert date of filing for public inspection at the Office of the Federal Register].

Comment period: To be assured consideration, comments on the payment classifications assigned to the interim APC assignments and/or status indicators of new or replacement Level II HCPCS codes in FR Doc. 2018-24243 of November 21, 2018 (83 FR 58818), must be received at one of the addresses provided in the ADDRESSES section no later than 5 p.m. EST on January 2, 2019.

## **FOR FURTHER INFORMATION CONTACT:**

Marjorie Baldo, (410) 786-4617.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In FR Doc. 2018–24243 of November 21, 2018 (83 FR 58818), entitled “Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs” (hereinafter referred to as the CY 2019 OPPTS/ASC final rule with comment period), there was an error that is identified and corrected in the Correction of Errors section below.

### **II. Summary of Errors**

On page 58818, we made an error in the “DATES” section under the heading “Comment period.” We inadvertently stated that comments on the payment classifications assigned to the interim Medicare Ambulatory Payment Classification (APC) assignments and/or status indicators of new or replacement Level II Healthcare Common Procedure Coding System (HCPCS) codes in the final rule with comment period must be received no later than 5 p.m. EST on December 3, 2018. The corrected date is January 2, 2019, 60 days from the date of filing for public inspection.

### **III. Waiver of Proposed Rulemaking**

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 for 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) 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 of the 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 of the Act 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 is 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.

We believe that this correcting document does not constitute a rulemaking that would be subject to these requirements. This correcting document corrects a technical error in the preamble to the CY 2019 OPPS/ASC final rule with comment period but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. Rather, it is intended to ensure that the public has 60 days to comment on the payment classifications assigned to the interim APC assignments and/or status indicators of new or replacement Level II HCPCS codes in the CY 2019 OPPS/ASC final rule with comment period, which is the duration of the typical comment period on these topics.

In addition, even if this were a rulemaking 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 correction 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 to have adequate time to comment on the payment classifications assigned to the interim APC assignments and/or status indicators of new or replacement Level II HCPCS codes included in the CY 2019 OPPS/ASC final rule with comment period.

Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply correcting the incorrect comment period end date. This correcting document is intended solely to ensure that the comment period end date included in the CY 2019 OPPS/ASC final rule with comment period is correct for those items on which the public can submit public comments. 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. 2018–24243 of November 21, 2018 (83 FR 58818), make the following corrections:

1. On page 58818, in the second column, in the “DATES” section, under the heading “Comment Period,” correct “December 3, 2018” to read “January 2, 2019”.

Dated: November 26, 2018

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**Ann C. Agnew,**

Executive Secretary to the Department,

Department of Health and Human

Services.

[FR Doc. 2018-26079 Filed: 11/29/2018 8:45 am; Publication Date: 11/30/2018]