**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 410, 412, 414, 416, 419, and 486**

**[CMS-1717-CN]**

**RIN 0938–AT74**

# Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Revisions of Organ Procurement Organizations Conditions of Coverage; Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Changes to Grandfathered Children's Hospitals-Within-Hospitals; Notice of Closure of Two Teaching Hospitals and Opportunity to Apply for Available Slots; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period that appeared in the November 12, 2019, issue of the **Federal Register** titled "Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Revisions of Organ Procurement Organizations Conditions of Coverage; Prior Authorization Process and Requirements for Certain Covered Outpatient Department Services; Potential Changes to the Laboratory Date of Service Policy; Changes to Grandfathered Children's

Hospitals-Within-Hospitals; Notice of Closure of Two Teaching Hospitals and Opportunity to Apply for Available Slots."

**DATES:** Effective date: This correcting document is effective January 1, 2020.

Applicability date: The corrections in this correcting document are applicable on and after January 1, 2020.

**FOR FURTHER INFORMATION CONTACT**: Elise Barringer via email Elise.barringer@cms.hhs.gov or at (410) 786–9222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In FR Doc. 2019-24138 of November 12, 2019 (84 FR 61142), there were a number of technical and typographical errors that are identified and corrected by the Correction of Errors section below. The corrections in this correction document are effective as if they had been included in the document that appeared in the November 12, 2019 issue of the Federal Register. Accordingly, the corrections are effective January 1, 2020.

## II. Summary of Errors

### A. Summary of Errors in the Preamble

1. Hospital Outpatient Prospective Payment System (OPPS) Corrections

On page 61162, we inadvertently omitted a discussion of the re-establishment of Comprehensive-Ambulatory Payment Classification (C-APC) 5495 (Level 5 Intraocular Procedures) in the description of additional C-APCs that are finalized for calendar year (CY) 2020. Therefore, we are correcting the final rule with comment period to add this description.

On page 61182, we are correcting the standard wage index conversion factor budget neutrality adjustment from 0.9990 to 0.9991, which also results in the overall wage index budget neutrality factor changing from 0.9981 to 0.9982. This correction is necessary because some of the CY 2020 wage indexes used for calculating budget neutrality were based on the incorrect assignment of a rural wage index rather than the rural floor. We note that this affected both the conversion factor, which changes from $80.784 to $80.793, as well as all CY 2020 OPPS payment rates included in the final rule with comment period that are based on that OPPS conversion factor. Therefore, on page 61420, we are correcting the full and reduced conversion factors based on the previously described change to the standard wage index budget neutrality adjustment.

This change in the OPPS conversion factor and payments also slightly affects the OPPS impact table, with relative increases and decreases based on assignment of the correct wage index and the corresponding increase in the OPPS conversion factor. As a result, on pages 61474 through 61478, we are correcting the impact table and accompanying preamble text based on the corrected payment rates, which are being updated in this correction notice. We note that there was also an error in the impact file, in which wage indexes that did not include the 5 percent cap on wage index decreases relative to 2019 (as described in the CY 2020 OPPS final rule with comment period (84 FR 61184 through 61188)) were incorrectly displayed as being the final CY 2020 wage indexes. This correction notice corrects these wage indexes in a revised impact file accompanying the correction notice.

On page 61194, we are correcting the reporting ratio. On page 61195, we are correcting the CY 2020 example of the supporting calculations for both the full and

reduced national unadjusted payment rates that will apply to certain outpatient items and services performed by hospitals that meet and that fail to meet the Hospital Outpatient Quality Reporting (OQR) Program requirements. On page 61196, we are correcting the beneficiary copayment amount calculated for APC 5071 and the national unadjusted payment rate for APC 5071. We also are correcting the reporting ratio for hospitals that failed to meet hospital OQR program requirements. These corrections are necessary because of the correction to the wage index budget neutrality adjustment and the corresponding change to the OPPS conversion factor.

On page 61184, we are correcting the preamble language that incorrectly states the difference between pass-through spending in 2019 and pass-through spending in 2020 as being a difference of 0.88 percentage points. Instead, the difference in pass-through spending in 2019 and 2020 is 0.74 percentage point, which is the difference between the 0.14 percent of total 2019 OPPS spending for pass-through drugs, biologicals, and devices and 0.88 percent of total 2020 OPPS spending for pass-through drugs, biologicals, and devices. We note that this inaccuracy was limited to the preamble language, and did not affect the calculated CY 2020 OPPS payment rates included elsewhere in the final rule with comment period.

On pages 61296 and 61336, we incorrectly referred to the CUSTOM*FLEX*® ARTIFICIAL*IRIS* as ARTIFICIAL*Iris*®. We are correcting the final rule with comment period to refer to the device by the correct name: CUSTOM*FLEX*® ARTIFICIAL*IRIS*.

On page 61306, we are correcting Table 41, "Drugs and Biologicals with Pass-Through Payment Status during CY 2020". We are removing records for HCPCS codes C9407 (Iodine i-131 iobenguane, diagnostic, 1 millicurie) and C9408 (Iodine i-131

iobenguane, therapeutic, 1 millicurie). We are adding a record for HCPCS code A9590 (Iodine i-131, iobenguane, 1 millicurie). This change was made because HCPCS codes C9407 and C9408 will no longer be active as of December 31, 2019. Both of these codes are being replaced by HCPCS code A9590. In the final rule, CMS mistakenly left the records for C9407 and C9408 in Table 41 and did not include the record for A9590.

On page 61313, we incorrectly stated that ASP data from the first quarter of CY 2019 was used to calculate payment rates in the CY 2020 proposed rule. We are correcting the final rule with comment period to refer to the data that was used to calculate payment rates in the CY 2020 proposed rule: ASP data from the fourth quarter of 2018.

On page 61313, we incorrectly stated that ASP data from the third quarter of CY 2019 were used to calculate payment rates in the CY 2020 final rule with comment period. We are correcting the final rule with comment period to refer to the data that was used to calculate payment rates in the CY 2020 final rule with comment period: ASP data from the second quarter of CY 2019.

On page 61320, we are correcting an incorrect description of the final CY 2020 policy regarding the payment of non pass-through biosimilars acquired under the 340B Program. We stated that we were finalizing our proposal, which was to continue to pay non pass-through biosimilars acquired under the 340B Program at the biosimilar's ASP minus 22.5 percent of the biosimilar's ASP, not minus 22.5 percent of the reference product's ASP.

On page 61337, we are correcting our estimate of the cost of drugs and biologicals recently made eligible for pass-through payment and continuing on

pass-through payment status for at least one quarter in CY 2020. The cost estimate was misstated in the preamble text of the final rule. The correct estimated cost is $425.6 million, not $339.6 million.

On pages 61448 through 61450, we incorrectly labeled and referenced the table "Proposed List of Outpatient Services That Would Require Prior Authorization" as Table 38. We are correcting the document to use the correct number, which is Table 64.

On pages 61456 and 61457, we incorrectly labeled and referenced the table as "Table 64--Proposed List of Outpatient Services That Would Require Prior Authorization." We are correcting the document to use the correct number, which is Table 65, as well as the correct title which states "Final" rather than "Proposed" and removes the word "Would". The corrected table reads: "Table 65--Final List of Outpatient Services That Require Prior Authorization." We also inadvertently omitted two additional botulinum toxin injection codes, J0586 and J0588, as noted on page 61456. Therefore, we are adding these codes to Table 65--Final List of Outpatient Services That Require Prior Authorization.

On pages 61458 through 61463, we inadvertently included an earlier iteration of the section titled "Summary of the Public Comments and Responses to Comments on the Proposed Rule". We are removing this language.

On page 61464, we erroneously included Table 65, which is identical to the Table 38, which is corrected to be numbered correctly as Table 64 above. We are removing the table.

2. Ambulatory Surgical Center (ASC) Payment System Corrections

On page 61381, we inadvertently omitted a comment and response regarding the temporary office-based designation of CPT code 64624. We are correcting the document to include this comment and response.

On page 61384, as a result of the correction to the OPPS conversion factor, we are correcting the ASC device offset amount for CPT code 22869 from "$8,383.12" to "$8,384.05."

On page 61388, as a result of the correction to the OPPS conversion factor, we are correcting ASC payment rate for total knee arthroplasty, CPT code 27447, from "$8,609.17" to "$8,609.82", and the ASC coinsurance from "$1,721.83" to "$1,721.96". Additionally, in that same sentence, we are correcting the OPPS payment rate for total knee arthroplasty from "$11,899.39" to "$11,900.71".

On page 61409, we inadvertently omitted a discussion of the final ASC conversion factors for ASCs that meet the quality requirements and ASCs who failed to meet the quality requirements in the description of updated ASC conversion factors for CY 2020. Therefore, we are adding this text.

B. Summary of Errors and Corrections to the OPPS and ASC Addenda Posted on the CMS Website

1. OPPS Addenda Posted on the CMS Website

In Addendum B of the CY 2020 OPPS/ASC final rule with comment period, HCPCS codes 99487, 99489, and 99490 were incorrectly assigned to status indicator "B" to indicate that another more appropriate code should be reported. However, the HCPCS codes that CMS considered more appropriate, HCPCS codes G2059, G2060, and G2057,

respectively, were not adopted for implementation in CY 2020. Therefore, these codes were mistakenly assigned status indicator “B” and in Addendum B (Final OPPS Payment by HCPCS Code for CY 2020), we corrected the following:

- CPT code 99487 (Cmplx chron care w/o pt vsit): We made a typographical error in the status indicator and APC assignments. Specifically, we are correcting the status indicator from "B" to "S", and the APC assignment to APC 5822 (Level 2 Health and Behavior Services).

- CPT code 99489 (Cmplx chron care addl 30 min): We made a typographical error in the status indicator assignment. Specifically, we are correcting the status indicator from "B" to "N".

- CPT code 99490 (Chron care mgmt srvc 20 min): We made a typographical error in the status indicator and APC assignments. Specifically, we are correcting the status indicator from "B" to "S", and the APC assignment to APC 5822 (Level 2 Health and Behavior Services).

In Addendum C (Final HCPCS Codes Payable Under the 2020 OPPS by APC), we corrected the following:

- CPT code 99487 (Cmplx chron care w/o pt vsit) was added to APC 5822 (Level 2 Health and Behavior Services).

- CPT code 99490 (Chron care mgmt srvc 20 min) was added to APC 5822 (Level 2 Health and Behavior Services).

In Addendum P in the spreadsheet in the tab titled “2020 FR Device Intensive List,” we inadvertently included CPT code 86891 (Autologous blood op salvage) in the list. HCPCS 86891 was not proposed as a device-intensive procedure for CY 2020. It is

appropriate to remove HCPCS 86891 from the device-intensive list because it is a lab code for "processing and storage of blood unit or component" and is not reported with a device code. We have removed this procedure from the list as this procedure does not meet the criteria for device-intensive status.

To view the corrected CY 2020 OPPS status indicators, APC assignments, relative weights, payment rates, copayment rates, device-intensive status, and short descriptors for Addendum A, B, C, and P that resulted from the technical corrections described in this correcting document, we refer readers to the Addenda and supporting files that are posted on the CMS website at: http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html. Select ''CMS-1717-CN'' from the list of regulations. All corrected Addenda for this correcting document are contained in the zipped folder titled "2020 OPPS Final Rule Addenda" at the bottom of the page for CMS-1717-CN.

2. ASC Payment System Addenda Posted on the CMS Website

The ASC device intensive methodology calculated estimated device cost based on OPPS payment rates. As a result of the correction to the OPPS conversion factor, we corrected the payment rates for device-intensive surgical procedures in Addendum AA. In addition, we corrected the following in Addendum BB:

- CPT code 78431: Updated the payment rate from $1,137.28 to $1,137.15.
- CPT code 78432: Updated the payment rate from $1,389.95 to $1,389.79.
- CPT code 78433: Updated the payment rate from $1,389.95 to $1,389.79.
- HCPCS code J7331: Added to Addendum BB with a payment rate of $6.13.
- HCPCS code J7332: Added to Addendum BB with a payment rate of $25.18.

HCPCS codes J7331 and J7332 were listed in the OPPS Addendum B of the CY 2020 OPPS/ASC final rule but were inadvertently omitted from ASC Addendum AA. Since pricing information was not available at the time the final rule was developed, both HCPCS codes received the payment indicator Y5 (Nonsurgical procedure/item not valid for Medicare purposes because of coverage, regulation and/or statute; no payment made) and were mistakenly omitted from the addendum. We are correcting this omission now with updated pricing information. These codes have been flagged with comment indicator N1 in Addendum BB of the CY 2020 OPPS/ASC correction notice to indicate that we have assigned the codes an interim ASC payment indicator of K2 for CY 2020. We intend to invite public comments in the CY 2021 OPPS/ASC proposed rule on the interim ASC payment indicator for these codes that we intend to finalize in the CY 2021 OPPS/ASC final rule with comment period.

To view the corrected final CY 2020 ASC payment indicators, payment weights, payment rates, and multiple procedure discounting indicator for Addendum AA and BB that resulted from these technical corrections, we refer readers to the Addenda and supporting files on the CMS website at: https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html. Select "CMS-1717-CN" from the list of regulations. All corrected ASC addenda for this correcting document are contained in the zipped folder entitled "Addendum AA, BB, DD1, DD2, and EE" at the bottom of the page for CMS-1717-CN.

## III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in 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 rulemaking 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 rulemaking 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, section 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 rulemaking 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 agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical and typographic errors in the preamble, addenda, payment rates, and

tables included or referenced in the CY 2020 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 with comment period. As a result, this correcting document are intended to ensure that the information in the CY 2020 OPPS/ASC final rule with comment period accurately reflects the policies adopted in that document.

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 corrections in this document into the final rule with comment period 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 CY 2020 OPPS/ASC final rule with comment period accurately reflects our methodologies and policies as of the date they take effect and are applicable.

Furthermore, such procedures would be unnecessary, as we are not altering our 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 2020 OPPS/ASC final rule with comment period 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. 2019-24138 of November 12, 2019 (84 FR 61142), make the following corrections:

1. On page 61162, column 1, first partial paragraph, in line 15, add the following text: "As discussed in section III.D.16 of this final rule with comment period, we are also re-establishing C-APC 5495 (Level 5 Intraocular Procedures) for CY 2020 based on need for a Level 5 for the Intraocular Procedures C-APC clinical family."

2. On page 61182, column 3, second partial paragraph,

a. In line 14, the figure "0.9981" is corrected to read "0.9982".

b. In line 16, the figure "0.9990" is corrected to read "0.9991".

3. On page 61184, column 1, second full paragraph,

a. In line 9, the figure "$80.784" is corrected to read "$80.793".

b. In line 17, the figure "0.9981" is corrected to read "0.9982".

c. In line 18, the figure "0.88 percentage point" is corrected to read "0.74 percentage point".

d. In line 22, the figure "$80.784" is corrected to read "$80.793".

4. On page 61194, column 2, third full paragraph, line 23, the figure "0.980" is corrected to read "0.981".

5. On page 61195, column 2,

a. Second full paragraph,

(1) In line 17, the figure "$609.94" is corrected to read "$610.01".

(2) In line 21, the figure "$598.35" is corrected to read "$598.42".

b. Third full paragraph,

(1) In line 7, the figure “$470.84” is corrected to read “$470.91”.

(2) In line 8, the figure “$609.94” is corrected to read “$610.01”.

(3) In line 11, the equation “$461.90 (.60 * $598.35 * 1.2866)” is corrected to read “$461.95 (.60 * $598.42 * 1.2866)”.

(4) In line 14, the equation “$243.98 (.40 * $609.94)” is corrected to read “$244.00 (.40 * $610.01)”.

(5) In line 17, the equation “$239.34 (.40 * $598.35)” is corrected to read “$239.37 (.40 * $598.42)”.

(6) In lines 21 and 22, the equation “$714.82 ($470.84 + $243.98)” is corrected to read “$714.91 ($470.91 +$244.00)”.

(7) In lines 24 and 25, the equation “$701.24 ($461.90 +$239.34)” is corrected to read “$701.32 ($461.95 +$239.37)”.

6. On page 61196, column 3,

a. First full paragraph, labeled “Step 1”,

(1) In line 5, the figure “$121.99” is corrected to read “$122.01”.

(2) In line 8, the figure “$609.94” is corrected to read “$610.01”.

b. Second to last paragraph, labeled “Step 4”, in line 5, the figure “0.980” is corrected to read “0.981”.

7. On page 61296, column 3, last paragraph,

a. In line 5, "ARTIFICIAL*Iris*®" is corrected to read "CUSTOM*FLEX*® ARTIFICIAL*IRIS*".

b. In line 7, "ARTIFICIAL*Iris*®" is corrected to read "CUSTOM*FLEX*® ARTIFICIAL*IRIS*".

c. In line 12, "ARTIFICIAL*Iris*®" is corrected to read "CUSTOM*FLEX*® ARTIFICIAL*IRIS*".

8. On page 61306, Table 41—Drugs and Biologicals With Pass-Through Status During CY 2020, is corrected by--

a. Removing the following rows:

| CY 2019 HCPCS Code | CY 2020 HCPCS Code | Long Descriptor | CY 2020 Status Indicator | CY 2020 APC | Pass-Through Payment Effective Date | Pass-Through Payment End Date |
|---|---|---|---|---|---|---|
| C9407 | C9407 | Iodine i-131 iobenguane, diagnostic, 1 millicurie | G | 9184 | 01/01/2019 | 12/31/2021 |
| C9408 | C9408 | Iodine i-131 iobenguane, therapeutic, 1 millicurie | G | 9185 | 01/01/2019 | 12/31/2021 |

b. Adding the following row in alphabetical and numerical order:

| CY 2019 HCPCS Code | CY 2020 HCPCS Code | Long Descriptor | CY 2020 Status Indicator | CY 2020 APC | Pass-Through Payment Effective Date | Pass-Through Payment End Date |
|---|---|---|---|---|---|---|
| C9407 and C9408 | A9590 | Iodine i-131, iobenguane, 1 millicurie | G | 9185 | 01/01/2019 | 12/31/2021 |

9. On page 61313,

a. Column 1, first full paragraph, in line 4, the words “first quarter of CY 2019” are corrected to read “fourth quarter of CY 2018”.

b. Column 3, first full paragraph, in lines 5 and 6, the words “third quarter of CY 2019” are corrected to read “second quarter of CY 2019”.

10. On page 61320, column 1, first partial paragraph, in lines 1 through line 7, remove the text “We also are finalizing our proposal to pay non pass-through biosimilars acquired under the 340B Program at the biosimilar’s ASP minus 22.5 percent of the reference product’s ASP, in accordance with section 1833(t)(14)(A)(iii)(II) of the Act.” and replace with the text “We also are finalizing our proposal to pay non pass-through biosimilars acquired under the 340B Program at the biosimilar’s ASP minus 22.5 percent of the biosimilar’s ASP, in accordance with section 1833(t)(14)(A)(iii)(II) of the Act.”

11. On page 61336, column 3, first full paragraph,

a. In line 9, “ARTIFICIAL*Iris*®” is corrected to read “CUSTOM*FLEX*® ARTIFICIAL*IRIS*”.

b. In line 18, “ARTIFICIAL*Iris*®” is corrected to read “CUSTOM*FLEX*® ARTIFICIAL*IRIS*”.

12. On page 61337, column 1, in the last two lines of the first partial paragraph, the figure “$399.6 million” is corrected to read “$425.6 million”.

13. On page 61381, column 3, first full paragraph,

a. In lines 1 and 2, remove the text “We did not receive any public comments on our proposal.” and add the following text:

Comment: One commenter requested that CPT code 64624 (Destruction by neurolytic agent, genicular nerve branches, including imaging guidance, when performed) be assigned a payment indicator for CY 2020 of "G2" – Non office-based surgical procedure added in CY 2008 or later; payment based on OPPS relative payment weight. The commenter argued that the RVS Relative Update Committee (RUC) (a committee of volunteer physicians that advise Medicare on the valuation of services paid under the Medicare Physician Fee Schedule) survey responders reported performing genicular nerve ablation in a facility 65 percent of the time and that "G2" is the more accurate payment indicator for the CPT code, similar to CPT code 64625 (Radiofrequency ablation, nerves innervating the sacroiliac joint, with image guidance (that is, gluoroscopy or computed tomography)) which is assigned a payment indicator of "G2" for CY 2020.

Response: We appreciate the commenter's suggestion. While we agree that RUC survey responders reported performing this procedure 35 percent of the time in a physician's office setting, CPT code 64624 is a new code effective Jan 1, 2020. The service is currently reported using CPT code 64640 (Destruction by neurolytic agent; other peripheral nerve or branch). When we looked at the previous procedure codes CPT 77002 and 64640, we found that the volume would surpass the 50 percent office-based threshold. Additionally, CPT code 64640 is assigned an office-based payment indicator for CY 2020 of "P3" – Office-based surgical procedure added to ASC list in CY 2008 or later with MPFS nonfacility PE RVUs; payment based on MPFS nonfacility PE RVUs. Therefore, we are finalizing our proposal to assign CPT code 64624 a temporary office-based designation of "P3" for CY 2020.

b. In line 2, delete the word “Therefore”.

c. In line 3, capitalize the word “we”.

14. On page 61384, column 3, first full paragraph,

a. In line 6, the figure “$8,383.12” is corrected to read “$8,384.05”.

b. In line 23, the figure “$8,383.12” is corrected to read “$8,384.05”.

15. On page 61388, column 1, third full paragraph,

a. In line 23, the figure “$8,609.17” is corrected to read $8,609.82” and the ASC coinsurance from “$1,721.83” to “$1,721.96”.

b. In line 25, the figure “$11,899.39” is corrected to read “$11,900.71”.

16. On page 61409, column 2,

a. End of the second full paragraph, after the words, “…determine the CY 2020 ASC payment rates.” add the following sentences: “The ASCQR Program affected payment rates beginning in CY 2014 and, under this program, there is a 2.0 percentage point reduction to the update factor for ASCs that fail to meet the ASCQR Program requirements. We are finalizing our proposal to utilize the hospital inpatient market basket update of 3.0 percent reduced by 2.0 percentage points for ASCs that do not meet the quality reporting requirements and then subtract the 0.4 percentage point MFP adjustment. Therefore, we are applying a 0.6 percent MFP-adjusted hospital market basket update factor to the CY 2019 ASC conversion factor for ASCs that do not meet the quality reporting requirements.

b. After the second full paragraph and before the section titled “3. Display of Final CY 2020 ASC Payment Rates,” add the following paragraph:

"For CY 2020, we are adjusting the CY 2019 ASC conversion factor ($46.532) by the proposed wage index budget neutrality factor of 1.0001 in addition to the MFP-adjusted hospital market basket update factor of 2.6 percent discussed above, which results in a final CY 2020 ASC conversion factor of $47.747 for ASCs meeting the quality reporting requirements. For ASCs not meeting the quality reporting requirements, we are adjusting the CY 2019 ASC conversion factor ($46.532) by the proposed wage index budget neutrality factor of 1.0001 in addition to the quality reporting/MFP-adjusted hospital market basket update factor of 0.6 percent, which results in a final CY 2020 ASC conversion factor of $46.816."

17. On page 61420, column 1, second full paragraph,

a. In line 4, the figure "80.784" is corrected to read "80.793".

b. In line 8, the figure "79.250" is corrected to read "79.257".

18. On page 61448,

a. Column 2, first full paragraph, in line 4, "Table 38" is corrected to read "Table 64".

b. Column 3, second full paragraph,

(1) In line 3, "(Table 38)" is corrected to read "(Table 64)".

(2) In line 17, "Table 38" is corrected to read "Table 64".

19. On page 61449, column 3, last paragraph, in line 1, "Table 38" is corrected to read "Table 64".

20. On page 61450, "Table 38--Proposed List of Outpatient Services That Would Require Prior Authorization" is corrected to read "Table 64--Proposed List of Outpatient Services That Would Require Prior Authorization".

21. On page 61456, third column, second full paragraph, line 11, "Table 64" is corrected to read "Table 65".

22. On page 61457,

a. The table titled "Table 64--Proposed List of Outpatient Services That Would Require Prior Authorization" is corrected to read: "Table 65--Final List of Outpatient Services That Require Prior Authorization."

b. In numerical order, add rows for botulinum toxin injection codes J0586 and J0588 after the rows for codes J0585 and J0587, respectively, as follows:

| Code | (ii) Botulinum Toxin Injection |
|---|---|
| J0586 | Injection, abobotulinumtoxina |
| J0588 | Injection, incobotulinumtoxin a |

23. On pages 61458 through 61463, remove the section titled, "4. Summary of Public Comments and Responses to Comments on the Proposed Rule" in its entirety.

24. On page 61464, remove Table 65 in its entirety.

25. On page 61474,

a. Column 2, first full paragraph, in line 19, the figure "$80.784" is corrected to read "$80.793".

b. Column 3, second full paragraph, in line 6, the figure "1.5" is corrected to read "1.6".

26. On page 61475 through 61478, Table 68—Estimated Impact of the CY 2020 Changes for the Hospital Outpatient Prospective Payment System, is corrected to read as follows:

## TABLE 68—ESTIMATED IMPACT OF THE CY 2020 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

| | | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|---|
| | | **Number of Hospitals** | **APC Recalibration (all changes)** | **New Wage Index and Provider Adjustments** | **All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update** | **Existing Off-campus Provider Based Department Visits Policy** | **All Changes** |
| | | | | | | | |
| **ALL PROVIDERS *** | | 3,732 | 0.0 | 0.1 | 2.7 | -0.6 | 1.3 |
| **ALL HOSPITALS** | | 3,625 | 0.0 | 0.1 | 2.7 | -0.6 | 1.3 |
| | (excludes hospitals held harmless and CMHCs) | | | | | | |
| | | | | | | | |
| **URBAN HOSPITALS** | | 2,849 | 0.1 | 0.0 | 2.7 | -0.5 | 1.3 |
| | LARGE URBAN | 1,471 | 0.0 | -0.2 | 2.4 | -0.4 | 1.2 |
| | (GT 1 MILL.) | | | | | | |
| | OTHER URBAN | 1,378 | 0.1 | 0.2 | 3.0 | -0.6 | 1.4 |
| | (LE 1 MILL.) | | | | | | |
| | | | | | | | |
| **RURAL HOSPITALS** | | 776 | -0.5 | 0.7 | 2.8 | -0.6 | 1.1 |
| | SOLE COMMUNITY | 365 | -0.5 | 0.7 | 2.8 | -0.7 | 0.9 |
| | OTHER RURAL | 411 | -0.6 | 0.7 | 2.7 | -0.5 | 1.3 |
| | | | | | | | |
| **BEDS (URBAN)** | | | | | | | |
| | 0 - 99 BEDS | 973 | 0.4 | 0.1 | 3.2 | -0.4 | 1.9 |
| | 100-199 BEDS | 822 | -0.1 | 0.0 | 2.5 | -0.5 | 1.2 |
| | 200-299 BEDS | 444 | 0.0 | 0.0 | 2.6 | -0.5 | 1.3 |
| | 300-499 BEDS | 390 | 0.1 | 0.3 | 3.0 | -0.5 | 1.5 |
| | 500 + BEDS | 220 | 0.1 | -0.1 | 2.6 | -0.7 | 1.1 |
| | | | | | | | |
| **BEDS (RURAL)** | | | | | | | |
| | 0 - 49 BEDS | 342 | -0.9 | 1.2 | 2.9 | -0.3 | 1.5 |

| | | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|---|
| | | **Number of Hospitals** | **APC Recalibration (all changes)** | **New Wage Index and Provider Adjustments** | **All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update** | **Existing Off-campus Provider Based Department Visits Policy** | **All Changes** |
| | 50- 100 BEDS | 267 | -0.6 | 0.9 | 2.9 | -0.7 | 0.9 |
| | 101- 149 BEDS | 87 | -0.6 | 0.9 | 2.9 | -0.6 | 1.2 |
| | 150- 199 BEDS | 43 | -0.2 | 0.8 | 3.3 | -0.9 | 1.3 |
| | 200 + BEDS | 37 | -0.1 | -0.5 | 2.0 | -0.6 | 0.7 |
| | | | | | | | |
| **REGION (URBAN)** | | | | | | | |
| | NEW ENGLAND | 134 | -0.3 | -2.0 | 0.3 | -1.0 | -1.3 |
| | MIDDLE ATLANTIC | 335 | 0.0 | 0.1 | 2.7 | -0.4 | 1.5 |
| | SOUTH ATLANTIC | 461 | 0.1 | -0.1 | 2.5 | -0.5 | 1.3 |
| | EAST NORTH CENT. | 456 | -0.1 | -0.2 | 2.3 | -0.7 | 0.8 |
| | EAST SOUTH CENT. | 165 | 0.2 | 0.8 | 3.6 | -0.2 | 2.6 |
| | WEST NORTH CENT. | 179 | 0.3 | 1.2 | 4.1 | -0.6 | 1.7 |
| | WEST SOUTH CENT. | 491 | 0.4 | 0.2 | 3.2 | -0.5 | 1.9 |
| | MOUNTAIN | 208 | 0.0 | -0.2 | 2.4 | -0.5 | 0.7 |
| | PACIFIC | 373 | 0.3 | 0.5 | 3.4 | -0.5 | 2.1 |
| | PUERTO RICO | 47 | 1.0 | 17.8 | 22.0 | 0.0 | 20.9 |
| | | | | | | | |
| **REGION (RURAL)** | | | | | | | |
| | NEW ENGLAND | 21 | -0.5 | -1.3 | 0.7 | -1.9 | -1.8 |
| | MIDDLE ATLANTIC | 53 | -0.6 | -0.1 | 1.9 | -1.0 | 0.2 |
| | SOUTH ATLANTIC | 119 | -0.8 | 0.9 | 2.7 | -0.2 | 1.7 |
| | EAST NORTH CENT. | 120 | -0.5 | -0.2 | 1.9 | -0.7 | 0.5 |
| | EAST SOUTH CENT. | 150 | -0.5 | 1.2 | 3.3 | -0.2 | 2.3 |
| | WEST NORTH CENT. | 96 | -0.3 | 1.5 | 3.9 | -0.8 | 1.1 |

| | | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|---|
| | | **Number of Hospitals** | **APC Recalibration (all changes)** | **New Wage Index and Provider Adjustments** | **All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update** | **Existing Off-campus Provider Based Department Visits Policy** | **All Changes** |
| | WEST SOUTH CENT. | 145 | -0.6 | 1.1 | 3.0 | -0.3 | 2.0 |
| | MOUNTAIN | 49 | -0.3 | 2.4 | 4.8 | -0.3 | 1.1 |
| | PACIFIC | 23 | -0.6 | 0.7 | 2.7 | -1.0 | 1.0 |
| | | | | | | | |
| **TEACHING STATUS** | | | | | | | |
| | NON-TEACHING | 2,469 | -0.1 | 0.3 | 2.8 | -0.4 | 1.6 |
| | MINOR | 781 | 0.1 | 0.2 | 2.9 | -0.6 | 1.3 |
| | MAJOR | 375 | 0.0 | -0.2 | 2.4 | -0.8 | 0.9 |
| | | | | | | | |
| **DSH PATIENT PERCENT** | | | | | | | |
| | 0 | 13 | 2.5 | 0.5 | 5.6 | 0.0 | 4.4 |
| | GT 0 - 0.10 | 274 | 1.0 | 0.0 | 3.6 | -0.3 | 2.3 |
| | 0.10 - 0.16 | 256 | 0.0 | 0.0 | 2.6 | -0.5 | 1.2 |
| | 0.16 - 0.23 | 558 | 0.1 | 0.0 | 2.7 | -0.4 | 1.4 |
| | 0.23 - 0.35 | 1,117 | -0.1 | 0.2 | 2.8 | -0.6 | 1.2 |
| | GE 0.35 | 931 | -0.1 | 0.1 | 2.6 | -0.6 | 1.2 |
| | DSH NOT AVAILABLE ** | 476 | 2.0 | 0.4 | 5.1 | -0.4 | 4.2 |
| | | | | | | | |
| **URBAN TEACHING/DSH** | | | | | | | |
| | TEACHING & DSH | 1,038 | 0.1 | 0.0 | 2.7 | -0.7 | 1.1 |
| | NO TEACHING/DSH | 1,344 | 0.1 | 0.1 | 2.8 | -0.3 | 1.6 |
| | NO TEACHING/NO DSH | 12 | 2.5 | 0.5 | 5.7 | 0.0 | 4.8 |
| | DSH NOT AVAILABLE2 | 455 | 1.8 | 0.2 | 4.7 | -0.3 | 4.0 |
| | | | | | | | |
| **TYPE OF** | | | | | | | |

| | | (1) | (2) | (3) | (4) | (5) | (6) |
|---|---|---|---|---|---|---|---|
| | | **Number of Hospitals** | **APC Recalibration (all changes)** | **New Wage Index and Provider Adjustments** | **All Budget Neutral Changes (combined cols 2 and 3) with Market Basket Update** | **Existing Off-campus Provider Based Department Visits Policy** | **All Changes** |
| **OWNERSHIP** | | | | | | | |
| | VOLUNTARY | 1,981 | 0.0 | 0.1 | 2.6 | -0.6 | 1.1 |
| | PROPRIETARY | 1,182 | 0.4 | 0.2 | 3.2 | -0.2 | 2.1 |
| | GOVERNMENT | 462 | -0.1 | 0.3 | 2.8 | -0.7 | 1.3 |
| | | | | | | | |
| **CMHCs** | | 41 | 1.4 | 0.5 | 4.6 | 0.0 | 3.7 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

Column (1) shows total hospitals and/or CMHCs.

Column (2) includes all final CY 2020 OPPS policies and compares those to the CY 2019 OPPS.

Column (3) shows the budget neutral impact of updating the wage index by applying the FY 2020 hospital inpatient wage index and the non-budget neutral frontier adjustment. The rural SCH adjustment continues our current policy of 7.1 percent so the budget neutrality factor is 1. The budget neutrality adjustment for the cancer hospital adjustment is 0.9999 because in CY 2020 the target payment-to-cost ratio is higher than the CY 2019 PCR target (0.89)

Column (4) shows the impact of all budget neutrality adjustments and the addition of the 2.6 percent OPD fee schedule update factor (hospital market basket percentage increase of 3.0 percent reduced by 0.4 percentage point for the productivity adjustment).

Column (5) shows the additional impact of the policy to pay clinic visits for nonexcepted providers under the otherwise applicable payment system. We note that we are completing the 2-year phase-in so the amount of the reduction will be the full difference in CY 2020 (or payment at 40 percent of the OPPS rate).

Column (6) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate, and adding estimated outlier payments. Note that previous years included the frontier adjustment in this column, but we have moved the frontier adjustment to Column 3 in this table.

These 3,732 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.

** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

27. On page 61478, column 3, first partial paragraph, in line 8, the figure "4.5" is corrected to read "4.6".

CMS-1717-CN

Dated: December 19, 2019

**Ann C. Agnew**,

Executive Secretary to the Department,

Department of Health and Human

Services.

[FR Doc. 2019-28364 Filed: 12/30/2019 4:15 pm; Publication Date: 1/3/2020]