

Dated: March 1, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing  
Administration.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[HCFA-1110-FN]

RIN 0938-AJ90

### Medicare Program; Sustainable Growth Rate for the Year 2000

**AGENCY:** Health Care Financing  
Administration (HCFA), HHS.

**ACTION:** Final notice.

**SUMMARY:** This final notice implements section 211(a)(2)(C) of the Public Law 106-113, the Medicare, Medicaid, and State Childrens Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA), that requires us to publish a notice in the **Federal Register** not later than 90 days after the date of enactment. This notice includes, based on the best available data, our determination of (1) allowed expenditures for physicians' services under the Medicare Supplementary Medical Insurance program (Part B) for both the 9-month period of April 1, 1999 through December 31, 1999, and for calendar year 1999, (2) estimated actual expenditures for Part B physicians' services in 1999, and (3) the sustainable growth rate (SGR) for calendar year 2000.

This notice also discusses our plans for making available to the Medicare Payment Advisory Commission and the public, by March 1 of each year beginning with 2000, an estimate of the sustainable growth rate and the conversion factor for the next year and the data used in making this estimate, as required in section 211(a)(2)(A) of the BBRA.

**EFFECTIVE DATE:** The provisions of this notice are effective April 10, 2000.

**FOR FURTHER INFORMATION CONTACT:**  
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#### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. Medicare Sustainable Growth Rate

Section 1848(f) of the Social Security Act (the Act), as amended by section 4503 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105-33), enacted on August 5, 1997, replaced the Medicare Volume Performance Standard (MVPS)

with a Sustainable Growth Rate (SGR). Section 1848(f)(2) of the Act specifies the formula for establishing yearly SGR targets for physicians' services under Medicare. The use of SGR targets is intended to control the actual growth in aggregate Medicare expenditures for physicians' services.

The SGR targets are not limits on expenditures. Payments for services are not withheld if the SGR target is exceeded by actual expenditures. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3) of the Act, is adjusted to reflect the success or failure in meeting the SGR target. If expenditures exceed the target, the update is reduced. If expenditures are less than the target the update is increased.

As with the MVPS, the statute specifies a formula to calculate the SGR based on our estimate of the change in each of four factors. The four factors for calculating the SGR are as follows:

(1) The estimated change in fees for physicians' services.

(2) The estimated change in the average number of Medicare fee-for-service beneficiaries.

(3) The estimated projected growth in real gross domestic product (GDP) per capita.

(4) The estimated change in expenditures due to changes in law or regulations.

Section 211 of the BBRA amended sections 1848(d) and 1848(f) of the Act with respect to the physician fee schedule update and the SGR. Section 211(b) of the BBRA maintains the formula for calculating the SGR, but amends section 1848(f)(2) of the Act to apply the SGR on a calendar year (CY) basis beginning with 2000 while maintaining the SGR on a fiscal year (FY) basis for FY 1998 through FY 2000. Specifically, section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, states that—“\* \* \* [t]he sustainable growth rate for all physicians' services for a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(A) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the applicable period involved,

(B) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare + Choice plan enrollees) from the previous applicable period to the applicable period involved,

(C) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous applicable period to the applicable period involved; and

(D) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under section 1834 (d)(3)(B) or (d)(4)(B) of the Act, as the case may be, minus 1 and multiplied by 100.”

Under section 1848(f)(4)(C) of the Act, as added by section 211(b)(3)) of the BBRA, the term “applicable period” means—(1) a FY, in the case of FY 1998, FY 1999 and FY 2000, and (2) a CY with respect to a year beginning with 2000.

To make the transition from a FY SGR to a CY SGR in 1999 using the FY 2000 SGR, sections 211(b)(2) and (3) of the BBRA require us to calculate SGRs for both FY and CY 2000. Section 1848(d)(4)(C) of the Act, as modified by section 211(a)(1)(B) of the BBRA, requires us to determine the allowed expenditures for both the 9-month period beginning April 1, 1999 and for CY 1999. The SGR for CY 2000 is then applied to allowed expenditures for CY 1999.

In making the transition to a CY SGR system, the law essentially requires us to use the 2000 SGR twice (both FY and CY) twice to determine 2000 allowed expenditures. The FY 2000 SGR is used to determine allowed expenditures for the April 1, 1999 to December 31, 1999 period and the CY 2000 SGR is used to determine CY 2000 allowed expenditures. Since we are using the FY 2000 SGR to determine allowed expenditures for the April 1, 1999 to December 31, 1999 period, allowed expenditures have been increased for components of the SGR that may not be reflective of the increase that actually occurs over that period. For instance, the FY 2000 SGR includes a portion of the full year effect of the new prostate screening benefit that did not become effective until January 1, 2000. Similarly, other components of the SGR (that is, the increase in physician fees, fee-for-service enrollment, real per capita GDP, and legislative factors other than prostate screening benefit) may have a different rate of increase in the FY 2000 SGR than occurred in the April 1, 1999 to December 31, 1999 period.

The issue described above occurs because the law required mismatched

time periods (that is, allowed expenditures determined on the basis of an April 1 through March 30 period increased by an SGR determined on the basis of a October 1 to September 30 federal FY) to be used to determine allowed expenditures from April 1, 1997 until December 31, 1999. Another contributing factor is use of 2000 data twice (both FY and CY) in making the transition to a CY SGR system. We have analyzed the impact on allowed expenditures of the BBA and BBRA relative to a system that requires use of matched time periods in establishing the SGR from April 1, 1997 until December 31, 1999. Based on current estimates, the impact of the BBA and BBRA requirements will increase allowed expenditures in CY 2000 by 1 to 2 percent relative to a system that required use of matched time periods. This results in a permanent 1 to 2 percent increase in the physician fee schedule conversion factor.

It is important to note that the FY 2000 SGR is required to be revised based on more recent data, but, as explained below, the BBRA does not provide for revision of either the FY 1998 or the FY 1999 SGR. This means that, for the transition to a calendar year SGR system, allowed expenditures for the period April 1, 1999 through December 31, 1999 (determined by applying the FY 2000 SGR to allowed expenditures for the 12-month period ending March 31, 1999) are subject to change based on revision of the FY 2000 SGR; allowed expenditures for the period January 1, 1999 through March 31, 1999 (determined using the FY 1999 SGR) are not subject to revision.

As we indicated in the **Federal Register** notice published on October 1, 1999 (64 FR 53396) before the November 29, 1999 enactment of the BBRA, the statute clearly requires that estimated values be used and there is no provision for revising estimates to reflect later data. Our actuaries estimate the elements of the SGR based on the best available data at the time the estimate is made. However, despite their best efforts there may be differences between the actuarial estimate and actual data on the rate of change in a component factor of the SGR. Our actuary's estimate of the percent change in a component of the SGR may be equal to, or higher or lower than, the actual percent change in that component, as determined based on later known information. For example, our actuaries have estimated the percent change in Medicare fee-for-service enrollees for each year under both the MVPS and the SGR. For the FY 1998 SGR, our actuarial estimate was equal to the percent

change in Medicare fee for service enrollment that actually occurred. Under the MVPS, for each of FYs 1994, 1995, 1996, and 1997, our actuarial estimate of the percent change in the Medicare fee-for-service population was higher than the actual percent change, based on later known information. These differences largely resulted from more beneficiaries selecting a managed care plan and fewer beneficiaries remaining in the fee-for-service program than our actuaries estimated at the time each MVPS was published. For FY 1999, our actuarial estimate of the percent change in fee-for-service population used in the SGR notice published on November 2, 1998 (63 FR 59188) was lower than the actual percent change. (This is largely due to fewer beneficiaries selecting a managed care plan than we earlier estimated). While there are differences between the MVPS and the SGR, they have the same long term impact on payment levels due to differences between estimated and actual data. Differences between estimated and actual changes in the Medicare fee-for-service population under the MVPS resulted in a higher physician fee schedule conversion factor than would have occurred if either the estimate were what actually happened or if the MVPS had been revised based on later data. The opposite is the case for differences between estimated and actual changes in the Medicare fee-for-service population under the FY 1999 SGR.

The BBRA, however, explicitly requires revisions based on later known information, beginning with the FY 2000 SGR. In section 1848(f)(3) of the Act, as added by section 211(b)(5) of the BBRA, the first sentence following subparagraph (c) states: "Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999." Since the BBRA does not include provisions for revising any SGR or MVPS before the FY 2000 SGR, we are not revising the MVPS or SGR (before the FY 2000 SGR) based on later known information that indicated the actual increase in a component of the SGR or MVPS was different from the earlier published estimate.

In general, the BBRA requires us to publish SGRs for 3 different time periods, no later than November 1 of each year, using the best data available as of September 1 of each year. Under section 1848(f)(3)(C)(i) of the Act, as added by section 211(b)(5) of the BBRA, the SGR is estimated and subsequently revised twice (beginning with the FY and CY 2000 SGRs) based on later data. Under section 1848(f)(3)(C)(ii) of the

Act, there are no further revisions to the SGR once it has been estimated and subsequently revised in each of the 2 years following the initial estimate.

The requirement of revisions to the SGR based on later data means that we will estimate and publish an SGR for the upcoming year, the contemporaneous year, and the preceding year by not later than November 1 of each year. For example, by not later than November 1, 2002, we will publish an estimate of the SGR for CY 2003, a revision of the CY 2002 SGR estimated in the previous year, and a revision of the CY 2001 SGR first estimated two years earlier and first revised in the previous year. Under section 1848(f)(3)(C)(ii) of the Act, this would be the final revision to the CY 2001 SGR.

Sections 1848(f)(3)(A) and (B) of the Act, as added by section 211(b)(5) of the BBRA, specify special rules with respect to the SGR and the CY 2001 and CY 2002 updates. Section 1848(f)(3)(A) of the Act requires us, no later than November 1, 2000, to revise the SGRs for FY 2000 and CY 2000 and establish the SGR for CY 2001, based on the best data available, as of September 1, 2000. Section 1848(f)(3)(B) of the Act requires us, by no later than November 1, 2001, to revise the SGRs for FY 2000 and CYs 2000 and 2001 and establish the SGR for CY 2002, based on the best data available as of September 1, 2001. In accordance with section 1848(f)(3)(C)(ii) of the Act, there will be no further revisions to the FY 2000 and CY 2000 SGRs after its revision in the 2001 notice.

#### *B. Physicians' Services*

Section 1848(f)(4)(A) of the Act defines the scope of physicians' services covered by the SGR. The BBRA made no changes to this definition that was also used for the MVPS. For this reason, we are continuing to use the same definition of physicians' services for the SGR in this notice as we did in prior SGR notices and for the MVPS published in the **Federal Register** (61 FR 59717) on November 22, 1996.

#### **II. Provisions of This Notice**

This final notice implements section 211(a)(2)(C) of the BBRA that requires us to publish a one-time notice in the **Federal Register**, not later than 90 days after the date of enactment, containing—

- (1) Allowed expenditures for physicians' services under the Part B program for both the 9-month period of April 1, 1999 through December 31, 1999, and for CY 1999, (2) estimated actual expenditures for physicians' services in 1999, and (3) the sustainable growth rate for CY 2000.

In general, the update for a year is based on the Medicare Economic Index (MEI) as adjusted, within bounds, by the amount of actual expenditures for physicians' services compared to allowed (that is, growth target) expenditures. A key difference between the MVPS and the SGR is that the comparison of actual and allowed expenditures is made on a cumulative basis under the SGR while it was made on an annual basis under the MVPS. The "adjustment factor" in section 1848(d)(4)(B) of the Act that reflects

actual expenditures compared to target expenditures is the adjustment to the MEI to reflect performance.

Section 1848(d)(3)(C) of the Act, as modified by the BBA, defines allowed expenditures for the 12-month period ending March 31, 1997 as equal to actual expenditures for physicians' services during that period (that is, April 1, 1996 through March 31, 1997), as we have estimated. Section 1848(d)(3)(C) of the Act defines allowed expenditures for subsequent 12-month periods to be equal to allowed

expenditures for physicians' services for the previous year increased by the SGR for the FY which begins during the 12-month period. For example, allowed expenditures for the 12-month period April 1, 1997 through March 31, 1998 are equal to allowed expenditures for the 12-months ending March 31, 1997, increased by the SGR for FY 1998.

Table 1 shows annual and cumulative allowed expenditures for physicians' services for each of the 12-month periods between April 1, 1996 and March 31, 2000.

TABLE 1

Period	Annual allowed expenditures (in billions)	Cumulative allowed expenditures (in billions)	FY SGR
4/96-3/97 .....	\$48.9	\$48.9	
4/97-3/98 .....	49.6	98.5	FY 1998=1.5%.
4/98-3/99 .....	49.4	147.9	FY 1999=-0.3%.
4/99-3/00 .....	52.3	200.2	FY 2000=5.7%.

In Table 1, for the period April 1996 through March 1997, annual allowed expenditures are equal to actual expenditures for the period. Annual allowed expenditures for each subsequent year are equal to the figure from the prior April 1 through March 31 12-month period (shown in the annual allowed expenditure column) multiplied by the SGR figure one row down in the right hand column. For example, allowed expenditures from April 1997 through March 1998 are equal to \$48.9 multiplied by 1.015. Cumulative allowed expenditures in a year are equal to the sum of the annual allowed expenditures figure in the same row and annual allowed expenditures for all prior years. Our current estimate of the FY 2000 SGR of 5.7 percent (2.1 percent for factor 1, -0.4 percent for factor 2, 2.7 percent for factor 3, and 1.2 percent for factor 4) reflects more recent information and correction an error made in calculation of the published FY 2000 SGR as discussed in section D below.

#### A. Allowed Expenditures for April 1, 1999 Through December 31, 1999

As indicated above, section 211(b) of the BBRA amended section 1848(f) of the Act to require us to calculate the SGR in future years on the basis of a CY. Section 211(a) of the BBRA similarly amends section 1848(d) of the Act to require that allowed expenditures be determined on a CY basis. Section 1848(d)(4)(C) of the Act, as amended by section 211(a)(1)(B) of the BBRA,

establishes a transition to a CY allowed expenditures system in 1999.

Section 1848(d)(4)(C)(ii)(I) of the Act, as added by section 211(a)(1)(B) of the BBRA, specifies that allowed expenditures for the 9-month period beginning April 1, 1999 must be our estimate of the amount of the allowed expenditures that would be permitted for that period under section 1848(d)(3)(C) of the Act. That is, allowed expenditures for the period April 1, 1999 through December 31, 1999 are equal to a portion of the allowed expenditures for the period April 1, 1999 through March 31, 2000, that are themselves determined by applying the FY 2000 SGR to allowed expenditures for the 12-months ending March 31, 1999.

As indicated in Table 1, annual allowed expenditures for the period April 1, 1999 through March 31, 2000 are \$52.3 billion. Our actuarial estimate of allowed expenditures for the 9-month period April 1, 1999 through December 31, 1999 is \$39.1 billion. We determined this figure by increasing quarterly allowed expenditures from the base period by the applicable SGR and adding them to get an annual figure. For instance, we increased actual quarterly expenditures from the base period (April 1, 1996 through March 31, 1996, July 1, 1996 through September 30, 1996, and October 1, 1996 through December 31, 1996) by the SGRs for FY 1998, FY 1999, and FY 2000 to determine quarterly allowed expenditures for each respective quarter included in the April 1, 1999 through

December 31, 1999 period and added together these quarterly allowed expenditures to determine the \$39.1 billion annual figure. We increased quarterly base expenditures rather than annual base expenditures because it better accounts for seasonality in expenditures.

Allowed expenditures for the April 1, 1999 through the December 31, 1999 period are based on the FY 2000 SGR. As previously discussed, section 1848(f)(3) of the Act requires two revisions to the FY 2000 SGR. The first revision must be made not later than November 1, 2000 based on the best data available as of September 1, 2000; the second revision must be made not later than November 1, 2001, based on the best data available as of September 1, 2001.

#### B. Allowed Expenditures for Calendar Year 1999

Section 1848(d)(4)(C)(ii)(II) of the Act, as added by section 211(a)(1)(B) of the BBRA, specifies that allowed expenditures for the year of 1999 must be our estimate of the amount of the allowed expenditures that would be permitted under section 1848(d)(3)(C) of the Act for that year. We are, therefore, calculating allowed expenditures for CY 1999 as the sum of allowed expenditures for—(1) The January 1, 1999 through March 31, 1999 period; and (2) allowed expenditures for the April 1, 1999 through December 31, 1999 period.

Annual allowed expenditures for the period April 1, 1998 through March 31, 1999 are \$49.4 billion. Our actuarial

estimate of allowed expenditures for the 3-month period January 1, 1999 through March 31, 1999 is \$12.5 billion that was determined by updating quarterly allowed expenditures included in the January 1, 1997 through March 31, 1997 period by the SGRs for FY 1998, FY 1999 and FY 2000. Adding this figure to the \$39.1 billion figure for April 1, 1999 through December 31, 1999 equals allowed expenditures for 1999 of \$51.6 billion. (Due to rounding, the figures may not add precisely to the total for 2000.) Allowed expenditures for the period April 1, 1998 through March 30, 1999 are equal to allowed expenditures for the previous 12-month period increased by the FY 1999 SGR. In the **Federal Register** published on October 1, 1999 (64 FR 53396), we stated that the statute clearly requires that we use estimated values and that there is no provision for revising estimates once the applicable SGR is determined. Although section 211 of the BBRA amends the Act to require revisions to previously determined SGRs based on later data (unavailable to us at the time the SGR is initially determined), this system of revision applies prospectively, beginning with the FY 2000 SGR. As added by section 211(b)(5) of the BBRA, the flush sentence following subparagraph (C) of section 1848(f)(3) states: "Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999."

Because there is no provision in the Act for revising the FY 1999 SGR or, consequently, the allowed expenditures for the April 1, 1998 through March 31, 1999 period, we will not revise the January 1, 1999 through March 31, 1999 portion of allowed expenditures included in the 1999 allowed expenditures. However, as indicated above, when we revise the FY 2000 SGR, allowed expenditures for April 1, 1999 through December 31, 1999 are subject to change.

#### C. Actual Expenditures for CY 1999

We currently estimate actual expenditures for CY 1999 to be \$50.7 billion. This estimate is based on actual claims data for services furnished during CY 1999 that were received

through September 30, 1999, and an estimate of expenditures for the year based on claims information received in prior years. Expenditure data for claims received after September 30, 1999 were unavailable to us at the time we made this estimate. As described in more detail below, we are making SGR data available through our web site ([www.hcfa.gov/pubforms/actuary](http://www.hcfa.gov/pubforms/actuary)). We will be providing quarterly expenditures under the SGR as data become available. Our estimate of actual expenditures for CY 1999 furnished in this notice will be revised as more complete claims information on 1999 expenditures becomes available to us and will be included in our web site information.

#### D. Sustainable Growth Rate for CY 2000

According to sections 1848(f)(2)(A) through (D) of the Act, as amended by section 211(b) of the BBRA, we have determined the CY 2000 SGR to be 5.8 percent. Our determination is based on estimates of the following four statutory factors as indicated in table 2 below:

TABLE 2

Statutory factors	Percent change
Fees .....	2.1
Enrollment .....	-0.6
Increase in Gross Domestic Product .....	2.5
Legislation .....	1.7
Total .....	5.8

**Note:** Consistent with section 1848(f)(2), the statutory factors are multiplied, not added, to produce the total (that is,  $1.021 \times (1 - 0.006) \times 1.025 \times 1.017 = 1.058$ .)

#### III. Calculation of the CY 2000 Sustainable Growth Rate

A more detailed discussion of our estimates of the four elements of the SGR follows.

##### Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for CY 2000

This factor was calculated as a weighted average of the CY 2000 fee increases that apply for physicians' and laboratory services that are the different types of services included in the

definition of physicians' services for the SGR.

Physicians' services represent approximately 89 percent of allowed charges for physicians' services under the SGR. As announced in the November 2, 1999 **Federal Register** (64 FR 59429), the physician fee schedule update (before applying the performance adjustment factor) for CY 2000 is 2.4 percent. The BBA provided for a 0.0 percent update for CY 2000 for laboratory services, which represents about approximately 11 percent of the Medicare allowed charges for physicians' services under the SGR. Table 3 shows both the physicians' and laboratory service updates that were used to determine the percentage increase in physicians' fees for CY 2000.

TABLE 3.—PHYSICIANS' AND LABORATORY SERVICE UPDATE FOR CALENDAR YEAR 2000

	2000	Weight
Physicians' Services	2.4%	.89
Laboratory Service ...	0.0%	.11

After taking into account the elements described in Table 3, we estimate that the weighted-average increase in fees for CY 2000 for physicians' services under the SGR (before applying any legislative adjustments) will be 2.1 percent.

##### Factor 2—The Percentage Change in the Average Number of Part B Enrollees From CY 1999 to CY 2000

This factor is our estimate of the percent change in the average number of fee-for-service enrollees for CY 2000 as compared to CY 1999. Medicare+Choice (M+C) plan enrollees, whose Medicare-covered medical care is outside the scope of the SGR, are excluded from this estimate. Our actuaries estimate that the average number of Medicare Part B fee-for-service enrollees (excluding beneficiaries enrolled in M+C plans) will decrease by 0.6 percent in calendar year 2000. This estimate was derived by subtracting estimated M+C enrollment from estimated overall Medicare enrollment as described in table 4 below.

TABLE 4

Year	Average Medicare Part B Enrollment (in millions)		
	Overall Part B	Medicare+Choice	Overall Part B, excluding Medicare+Choice
1999 .....	37.010	6.194	30.816
2000 .....	37.374	6.746	30.628

TABLE 4—Continued

Year	Average Medicare Part B Enrollment (in millions)		
	Overall Part B	Medicare+Choice	Overall Part B, excluding Medicare+Choice
Percent change .....	.....	.....	–0.6

Our actuaries estimate of the percent change in the average number of fee-for-service enrollees for CY 2000 compared to CY 1999 of –0.6 percent is less of a decrease than the estimate of this factor for FY 2000 because—(1) The historical base from which our actuarial estimate is made has changed (that is, we have more information on enrollment from CY 1999 that affects our estimates for future years), and (2) the applicable time period has changed from the FY to CY.

*Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in CY 2000*

Section 1848(f)(2)(C) of the Act, as amended by section 211 of the BBRA, requires us to estimate growth in real GDP per capita. This factor is applied on a CY basis beginning with the CY 2000 SGR. We estimate that the growth in real GDP will be 2.5 percent in CY 2000.

In the FY 2000 SGR notice published on October 1, 1999 (64 FR 53396), we estimated that real GDP growth per capita for FY 2000 would be 1.8 percent. We are now estimating that real GDP growth per capita for CY 2000 to be 2.5 percent. The higher estimate is due in part to Bureau of Economic Analysis (BEA) revisions to the historical National Income and Product Accounts (NIPA) and in part due to a change in the outlook for growth in 2000. The historical revisions, released by BEA on October 29, 1999, raised historical real GDP per capita growth by 0.2 percentage points on average between 1959 through 1998, with larger differences in recent years. (For a detailed description of changes to NIPA, see Brent R. Moulton, Robert P. Parker, and Eugene P. Seskin, “A Preview of the 199 Comprehensive Revision of the National Income and Product Accounts,” Survey of Current Business (August, 1999): 7–20.) Subsequently, the projections of growth in real GDP per capita for 2000 have been revised upwards to reflect these revisions. Also since the October 1, 1999 SGR notice, projections of real GDP per capita in 2000 have been revised upward to reflect stronger than expected stock market performance and less than expected buildup of inventories in preparation for Y2K in

1999. Also, the GDP growth figure in this notice is calculated on a calendar rather than a fiscal year basis. (Moving from a FY 2000 to a CY 2000 estimate of GDP results in a –0.2 percent change from 2.7 percent to 2.5 percent.)

These same methodological changes in GDP measurement also have the effect of reducing the MEI. If we were to recalculate the MEI for CY 2000, based on the GDP measurement changes, it would be 2.0 percent rather than the 2.4 percent calculated and used for the 2000 physician fee schedule update. However, since such an MEI would not be the one used in establishing the 2000 update, and since the price factor in the SGR is the “Secretary’s estimate of the weighted average percentage increase in physician fees” for all physicians’ services, we are using the 2.4 percent increase for the fee component of the CY 2000 SGR. Consistent with the law, we are using the 2.4 percent increase in physician fees used for the CY 2000 physician fee schedule update.

*Factor 4—Percentage Change in Expenditures for Physicians’ Services Resulting From Changes in Law or Regulations in CY 2000 Compared With CY 1999*

Legislative changes contained in the BBA and the BBRA will have an impact on expenditures for physicians’ services under the SGR in CY 2000. Section 4103 of the BBA mandates a new prostate screening benefit effective January 1, 2000. This provision is estimated to increase expenditures in CY 2000 relative to CY 1999 by 1.8 percent. Additionally, effective January 1, 2000, section 4513 of the BBA removes the requirement that a subluxation of the spine be demonstrated by an x-ray before a beneficiary can receive Medicare coverage for chiropractic services. This provision will also result in a small increase in expenditures in CY 2000. The impact of BBA Medicare Secondary Payer provisions will have small marginal impact on reducing expenditures in CY 2000.

Certain BBRA provisions will also have a small impact on expenditures in CY 2000. Section 224 of the BBRA increases payments for pap smears and

will slightly increase expenditures in CY 2000. Section 221 of the BBRA postponed the implementation of payment caps on physical and occupational therapy and speech-language pathology services. The effect of this provision on physicians and independent practitioners will result in a small increase in the CY 2000 SGR.

After taking into account these provisions, the percentage change in expenditures for physicians’ services resulting from changes in law or regulations is estimated to be 1.7 percent for 2000.

After it was enacted in 1997, our actuaries estimated the effect of changes in expenditures resulting from the BBA. Their estimates took into account the effect of the prostate screening benefit (effective beginning with January 1, 2000). However, we inadvertently neglected to include it as part of our estimate of factor 4 for FY 2000. Had we included the effect of this in our estimate of the changes in law or regulations, our estimate of factor 4 for FY 2000 would have been 1.5 percentage points higher and the overall FY 2000 SGR would have been 3.5 percent instead of 2.1 percent. We will incorporate the effect of the prostate screening benefit in revisions we will make to the FY 2000 SGR no later than November 1, 2000.

**IV. Publication and Dissemination of Information**

Section 211 of the BBRA amends section 1848(d)(1)(E) of the Act to require publication and dissemination of information related to the physician fee schedule update and SGR at two points during a year. Specifically, we must publish in the **Federal Register** not later than November 1 of each year (beginning with 2000) the conversion factor that will apply to physicians’ services for the succeeding year, the update determined (under section 1848(d)(4) of the Act) for the succeeding year, and the allowed expenditures (under section 1848(d)(4) of the Act) for such succeeding year. Thus, 60 days before the conversion factor is actually implemented, we are required to publish the conversion factor that will apply for the following calendar year, as

well as the percentage update for that year and the allowed expenditures for that year. We plan to implement this provision as part of the physician fee schedule final rule that we publish by November 1 of the year before it is applicable.

In addition to this November 1 publication requirement, the BBRA amended section 1848(d)(1)(E)(ii) of the Act to require that we make available to the Medicare Payment Advisory Commission [MedPAC] and the public by March 1 of each year (beginning with 2000) an estimate of the sustainable growth rate and of the conversion factor that will apply to physicians' services for the succeeding year and the data used in making this estimate. While the statute requires dissemination of information to the MedPAC and the public, it does not require publication of this information in the **Federal Register**. In this notice, we provide information on how we intend to disseminate the information required by section 1848(d)(1)(E)(ii) of the Act and we describe the limitations of the data we plan to make available.

The statute requires that we make available the following items by March 1st of each year:

- An estimate of the SGR for the following year.
- An estimate of the physician fee schedule conversion factor for the next year and the data used in making these estimates.

We plan to make all of this information available on the HCFA web site ([www.hcfa.gov/pubforms/actuary](http://www.hcfa.gov/pubforms/actuary)).

The March 1 estimate will not necessarily be a good predictor of the SGR that we specify by November 1 of each year. While it is the best estimate at the time, a figure specified later in the year is likely to differ from it for several different reasons.

We will have more current data on the four factors that comprise the SGR formula as of September 1 of a year for publication in the November 1st notice, than will be available by March 1. For example, for the March 1 estimate, we will need to estimate the percent change in fee-for-service enrollment for the following year although we have little information on the change in fee-for-service enrollment for the current year. Similarly, an estimate of the percent change in real GDP per capita for the subsequent year made by November 1 is likely to be better than an estimate made by March 1 of that year. In addition, an estimate of the changes in law and regulation affecting expenditures for physicians' services for the subsequent year would require an estimate of the financial impact of policy changes

several months before the physician fee schedule proposed rule is published.

We also point out that there may be differences between an SGR for a year specified by November 1 and the SGR for the same year as subsequently revised based on later data. Specifically, the BBRA required the revision of the SGR for a year beginning with the FY 2000 SGR, in each of the 2 years after it is initially specified, based on more current data. Given the required revisions of the November 1 estimate, and the previously discussed limitations of the March 1 estimate, we anticipate that the March 1 estimate will not necessarily be an accurate predictor of the November 1 SGR.

The second item we are required to make available by March 1 is an estimate of the conversion factor for the following year. This factor may be even more difficult to estimate by March 1 than the SGR for the following year. The conversion factor for a year is equal to the conversion factor for the previous year updated by the physician fee schedule update. As with the MVPS, the update is equal to the MEI, adjusted (up or down) by the performance of actual expenditures compared to target expenditures (called allowed expenditures in the statute). For example, the CY 2000 update of 5.5 percent was based on an MEI of 2.4 percent and a performance adjustment of 3.0 percentage points. (These figures are multiplied, not added. The update of 5.5 percent is determined by multiplying the MEI of 2.4 percent, or 1.024, by the performance adjustment factor of 3.0 percent, or 1.030:  $1.024 \times 1.03 = 1.05472$ ). Beginning with CY 2001, the performance adjustment compares actual expenditures from March 1, 1996 through the end of a year (2000 for the 2001 update) adjusted by the SGR for the following year (2001 for the 2001 update) to allowed expenditures from March 1, 1996 through the end of that next year (2001 for the 2001 update). (We will provide more detail on the precise formula for determining the physician fee schedule in the update notice that will be published not later than November 1, 2000.)

By March 1 of each year, however, we will have no actual data on key elements that comprise the formula for updating the conversion factor for the next year. For example, by March 1, 2000, we will have no data on actual expenditures for physicians' services under the SGR for CY 2000 since we receive expenditure information on a quarterly basis during the year, with a lag time after the quarter closes. By

March 1, the first quarter of the calendar year will not even be complete.

Similarly, we are unlikely to have reasonably complete expenditure data on the last quarter of 1999. Finally, the SGR for a year also affects allowed expenditures through the end of the next year. We have already discussed why the March 1 SGR estimate is likely to change. Therefore, by March 1 of each year, we will have only estimates of the three data elements required to determine the performance adjustment to the MEI (actual expenditures for physicians' services for the current year, allowed expenditures through the end of the next year, and the SGR for the next year). We provide the above discussion to caution that the March 1 estimate of the conversion factor update for the next year is not likely to be a good predictor of the update for the year specified by November 1. It is only an estimate and will likely change based on more current information. We will make our estimate of the physician fee schedule conversion factor available on the HCFA web site ([www.hcfa.gov/pubforms/actuary](http://www.hcfa.gov/pubforms/actuary)).

By March 1, we will also make available on the HCFA web site data used in making the estimate of the SGR and conversion factor update. Because we will not have any data on actual CY 2000 expenditures and because many elements of the SGR will probably change during the year, there are limits on the data we can provide. To provide data that will be useful, we plan, on a quarterly basis, to post on the HCFA web page quarterly expenditures for services covered by the SGR. The estimates would update prior quarters where later data were available for that quarter. Data would be posted approximately 6 months after the end of the quarter (when data for the quarter are reasonably complete).

Finally, we also point out that the two SGR elements for which there has been the largest difference between our actuaries' estimates and the actual amounts have been the fee-for-service enrollment numbers and real gross domestic product per capita. We note that more recent data on these two elements are available during a year on several web sites. Actual real GDP for a quarter is available from the home page for the Bureau of Economic Analysis of the Department of Commerce ([www.bea.doc.gov](http://www.bea.doc.gov)). Population figures are available from the home page for the Census Bureau ([www.census.gov](http://www.census.gov)). Real GDP per capita can be calculated from these figures. In addition, monthly M+C enrollments are currently available on the HCFA Home page ([www.hcfa.gov/stats.mmcc.htm](http://www.hcfa.gov/stats.mmcc.htm)). In April of each year,

when our Office of the Actuary puts the Trustees Report on the HCFA Home page, we will also post the projections of total Medicare Part B enrollment for the current and subsequent calendar years, as well as for the preceding calendar year, consistent with the Trustees Report. Thus, the Medicare fee-for-service enrollment could be determined. With these data, during the year after March 1, the public can make estimates of actual expenditures relative to the SGR and the performance adjustment to the update for a year.

#### V. Waiver of Proposed Rulemaking and 30-Day-Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that engaging in proposed rulemaking in the context of this document is impracticable because section 211 of the BBRA requires that this final notice be published in the **Federal Register** not later than 90 days after enactment of this section on November 29, 1999. Moreover, in accordance with section 1871(b)(2) of the Act, notice and comment provisions do not apply where the law establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained. We also believe that it is unnecessary to publish a proposed notice for public comment because we have no discretion with respect to the provisions of this notice. We are implementing the statute as required by the BBRA.

Therefore, we find that notice and comment provisions are not applicable here and we are issuing this notice in final form. We also find that for the above reasons it is prudent to waive the 30 day delay in effective date.

#### VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed

by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

#### VII. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians and suppliers as small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million.

This notice announces only a SGR rate of increase for CY 2000 and does not affect physician expenditures in CY 2000. The SGR announced in this notice will be revised later this year. It is the revised SGR that will affect allowed expenditures for physicians' services through CY 2000 and that will be part of a formula for determining the physician fee schedule update and conversion factor for CY 2001. As indicated above, we will publish the physician fee schedule update for CY 2001 by no later than November 1, 2000. It is that update which will affect expenditures for physicians' services in CY 2001.

We are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

#### VIII. Federalism

We have reviewed this final notice under the threshold criteria of Executive Order 13132 and have determined that it does not significantly affect the rights, roles, and responsibilities of States.

(Sections 1848(d) and (f) of the Social Security Act) (42 U.S.C. 1395w-4(d) and (f))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 24, 2000.

**Nancy-Ann Min DeParle,**  
*Administrator, Health Care Financing Administration.*

Approved: March 24, 2000.

**Donna E. Shalala,**  
*Secretary.*

[FR Doc. 00-8708 Filed 4-4-00; 3:42 pm]

BILLING CODE 4120-03-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Office of Inspector General

##### Program Exclusions: March 2000

**AGENCY:** Office of Inspector General, HHS

**ACTION:** Notice of program exclusions.

During the month of March 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective date
<b>Program-Related Convictions</b>	
Baez, Eduardo, Lewisburg, PA	04/20/2000
Bizayko, Yuri, Brooklyn, NY .....	04/20/2000
Bouska Wright, Janet Kay, Wichita, KS .....	04/20/2000