

**FOR FURTHER INFORMATION CONTACT:** August Nemec, (410) 786-0612; or Jeannette Kranacs, (410) 786-9385.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In CMS-1360-N, FR Doc. 04-17444 of July 30, 2004 (69 FR 45721), there were three technical errors that are 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 document published July 30, 2004. Accordingly, the corrections are effective for discharges occurring on or after October 1, 2004, and on or before September 30, 2005.

We recently determined that several technical errors occurred in the publication of the wage index values for a number of specific Metropolitan Statistical Areas (MSAs). A description of those technical errors is included in the "Correction of Errors" section below. We note that correcting these technical errors is a purely administrative function that does not result in any change of policy or payment methodology.

**II. Correction of Errors**

In CMS-1360-N, FR Doc. 04-17444 of July 30, 2004 (69 FR 45721), make the following corrections:

A. On page 45734, remove Stanly, NC from Urban Area 1520 Charlotte-Gastonia-Rock Hill, NC-SC, because it has a rural designation instead of an urban designation. We note an error in the labeling of the wage index tables within the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS). That labeling error is the listing of Stanly County, NC as one of the urban areas under MSA 1520 when, in fact, we consider Stanly County, NC to be a rural area in North Carolina. Stanly County wage data have always been correctly treated as rural in the actual creation of the IRF wage index values, and it has only been the listing of Stanly County under MSA 1520 that was in error. Consequently, we are correcting our labeling error in the IRF PPS notice (CMS-1360-N), and have removed Stanly County from the list of areas that fall under the MSA 1520 wage index. Since this is strictly a labeling correction that does not affect the actual computation of the wage index values, IRFs in Stanly County, NC will continue to fall under, and use, the wage index for rural North Carolina.

B. On page 45746, remove the wage index of 0.0000 for Urban Area 4150 and in its place, add a wage index of 0.8677. This change is made due the

inadvertent insertion of 0.0000 for MSA 4150 when it should have been 0.8677.

C. On page 45757, remove the wage index of 0.0000 for Urban Area 7000 and in its place, add a wage index of 0.9757. This change is made due to the inadvertent insertion of 0.0000 for MSA 7000 when it should have been 0.9757.

**III. Waiver of Proposed Rulemaking and Delayed Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a regulation take effect. We can waive this procedure, however, if we find good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued. 5 U.S.C. 553(b)(B). We can also waive the 30-day delayed effective date of the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

We find it unnecessary to undertake notice-and-comment rulemaking because this correction notice merely provides technical corrections to the July 30, 2004 notice. This correction notice corrects inadvertent drafting errors (that is, a labeling error with respect to Stanley County and the insertion of incorrect wage indexes for MSA 4150 and MSA 7000). We are not making substantive changes in policy, but rather, are simply implementing correctly the payment methodology that we long ago proposed, received comment on, and subsequently finalized. Thus, because the public has already had the opportunity to comment on the payment methodology used to calculate the wage indexes, additional comment would be unnecessary.

In addition, publication of a substantive rule shall be made not less than 30 days before its effective date. We can waive this procedure, however, if we find good cause that a delayed effective date is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(d)(3). We believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical mistakes (that is, a labeling error with respect to Stanley County and the insertion of incorrect numbers in the wage indexes for MSA 4150 and MSA 7000). Further, we believe imposing a 30-day delay in the effective date would be contrary to the public interest with respect to IRF providers in MSA 4150 and MSA 7000. As a matter of good public policy, the

rates used in the IRF PPS should not be based on wage indexes that contain inadvertent errors that, if not corrected, would have very real impacts on the payments received by providers in MSA 4150 and MSA 7000. We believe that it is imperative that these providers receive appropriate IRF PPS payments and that failure to do so would be contrary to the public interest. Furthermore, the changes noted above do not make any substantive changes to the IRF PPS payment methodology or underlying payment policies. Therefore, we find good cause to waive the 30-day delayed effective date.

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

Dated: September 30, 2004.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**[CMS-1249-CN]**

**RIN 0938-AM46**

**Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections**

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

**ACTION:** Correction notice.

**SUMMARY:** This document corrects technical errors that appeared in the July 30, 2004 **Federal Register**, entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice."

**DATES:** This correction is effective October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Kranacs, (410) 786-9385, Bill Ullman, (410) 786-5667, or Sheila Lambowitz, (410) 786-7605.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 04-17443 of July 30, 2004 (69 FR 45775), there were a number of technical errors that are identified in this notice. It was recently determined that technical errors occurred in the hospital wage index calculation process

for FY 2005, necessitating adjustments to the hospital wage index relating to a number of specific Metropolitan Statistical Areas (MSAs). A description of those technical errors will be included in a **Federal Register** notice specific to the hospital inpatient prospective payment systems (IPPS). As we explained in the July 30, 2004, update notice, the SNF wage index values reflect the pre-floor, pre-reclassification wage data used in the FY 2005 IPPS rates, and therefore, we believe it would be appropriate to incorporate corrections made to the inpatient hospital wage indexes in our SNF PPS wage index tables. Further, we note that correcting these technical errors is a purely administrative function that does not result in any change of policy or payment methodology.

We are correcting Table 10 (which serves to illustrate the payment rate computations for a fictitious "XYZ" SNF located in State College, PA), in order to reflect the application of the corrected wage index. In section II of this notice we are correcting the figure for the PPS total payment in the "XYZ" example and restoring a footnote that was inadvertently omitted from the published table. This footnote corresponds to the triple asterisk displayed in the table's "Percent Adjustment" column for Resource Utilization Group (RUG) SSC, and refers to the application of the 20 percent add-on under section 101(a) of the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999.

We are also correcting Table 12, which displays the projected impact of the FY 2005 SNF PPS payment update, including the variation in impact by region and by certain other facility characteristics. We note that the effect on the corrected table is solely distributional in nature and, accordingly, there is no change in the estimated aggregate expenditures for FY 2005 as set forth in the July 30, 2004, update notice. A further discussion of the projected impact of the FY 2005 SNF PPS payment update can be found in the July 30, 2004, update notice (69 FR 45820).

In addition, we have identified a labeling error in the wage index tables used in the SNF PPS. That labeling error is the listing of Stanly County, NC as one of the areas under Metropolitan Statistical Area (MSA) 1520 when, in fact, we consider Stanly County, NC to be a rural area in North Carolina. Stanly County wage data have always been correctly treated as rural in the actual creation of the SNF wage index values, and it has only been the listing of Stanly

County under MSA 1520 that was in error. Consequently, we have corrected the wage index table in the update notice to remove Stanly County from the list of areas that fall under the MSA 1520 wage index. Since this is strictly a labeling correction that does not affect the actual computation of the wage index values, SNFs in Stanly County, NC will fall under, and use, the wage index for rural North Carolina effective October 1, 2004.

We also wish to clarify that the adjustment amount (\$463.96) displayed for RUG CC2 in the "Percent Adjustment" column of the corrected Table 10, as indicated by the double asterisk and accompanying footnote, assumes that the days shown in the table for RUG CC2 are for treatment of a patient with acquired immune deficiency syndrome (AIDS). Therefore, this adjustment amount reflected the application of section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). As explained in the July 30, 2004, update notice (69 FR 45777), section 511 of the MMA provides for a temporary 128 percent increase in payment for any SNF resident with AIDS. We further note that this special 128 percent add-on is applicable regardless of the particular RUG to which an AIDS patient is assigned, and is made in lieu of any other add-on (either 20 percent or 6.7 percent) that might otherwise apply to that RUG.

We have corrected the errors in the wage tables and other tables as noted above. These corrected tables are posted and available on the CMS Web site at: <http://www.cms.hhs.gov/providers/snfpps>. These corrected tables are effective October 1, 2004. We note the corrected tables will be included in a forthcoming **Federal Register** notice.

## II. Correction of Errors

In FR Doc. 04-17443 (69 FR 45775), make the following corrections:

1. On page 45817,
  - a. Third column, line 12, the figure "\$25,161" is corrected to read "\$25,117".
  - b. At the end of the table and after the last sentence, add the following sentence: "\*-\*-\*Reflects a 20 percent adjustment from section 101(a) of the BBRA."

## III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure

Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find it unnecessary to undertake notice-and-comment rulemaking because this notice merely provides technical corrections to the regulations. We are not changing our payment methodology, but rather, are simply implementing correctly the payment methodology that we previously proposed, received comment on, and subsequently finalized. Thus, because the public has already had the opportunity to comment on the payment methodology being used to calculate wage indexes, additional comment would be unnecessary.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical mistakes (that is, a labeling error with respect to Stanly County and the insertion of incorrect numbers in the wage indexes for certain MSAs). Further, we believe imposing a 30-day delay in the effective date would be contrary to the public interest with respect to SNF providers in the affected MSAs. As a matter of good public policy, the rates used in the SNF PPS should not be based on wage indexes that contain inadvertent errors that, if not corrected, would have very real impacts on the payments received by providers in the affected MSAs. We believe that it is imperative that these providers receive appropriate SNF PPS payments and that failure to do so would be contrary to the public interest. Furthermore, the changes noted above do not make any substantive changes to the SNF PPS payment methodology or underlying payment policies. Therefore, we find good cause to waive notice-and-comment procedures, as well as the 30-day delay in effective date.

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

Dated: September 30, 2004.

**Ann Agnew,**

*Executive Secretary to the Department.*

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