

of Beauregard, Grant, and St. Mary parishes on November 6, 2007.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 411, 412, 413, and 489

[CMS-1533-CN3]

RIN 0938-A070

#### Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Correction

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

**ACTION:** Correction of final rule with comment period.

**SUMMARY:** This document corrects wage index, case-mix index, and geographic adjustment factor errors in the final rule with comment period that appeared in the August 22, 2007 **Federal Register** entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates Final Rule"; and the correction notice that appeared in the October 10, 2007 **Federal Register** entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates; Correction".

**DATES:** *Effective Date:* October 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Miechal Lefkowitz, (410) 786-5316. Valerie Miller, (410) 786-4535.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc 07-3820 of August 22, 2007 (72 FR 47130) and in FR Doc. 07-4875 of October 10, 2007 (72 FR 57634), there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section of this notice.

We issued the fiscal year (FY) 2008 hospital inpatient prospective payment systems (IPPS) final rule with comment period on August 1, 2007. The FY 2008 IPPS final rule with comment period appeared in the August 22, 2007 **Federal Register**, hereinafter referred to as the FY 2008 IPPS final rule with comment period.

We issued a correction notice for the FY 2008 IPPS final rule with comment

period on September 28, 2007. The correction notice appeared in the October 10, 2007 **Federal Register** hereinafter referred to as the second FY 2008 IPPS correction notice.

The provisions in this correction notice are effective as if they had been included in the FY 2008 IPPS final rule with comment period. Accordingly, the corrections are effective October 1, 2007.

##### II. Summary of Errors

We recently discovered a small number of inadvertent technical or typographical errors. Therefore, this notice corrects the errors that appeared in the FY 2008 IPPS final rule with comment period and the second FY 2008 IPPS correction notice.

In the second FY 2008 IPPS correction notice (72 FR 57637), there were typographical errors in some of the case mix indices listed in Table 2. The case mix index (CMI) values for some of the providers listed in Table 2 of that correction notice were intended to be the same as the CMI values in Table 2 of the FY 2008 IPPS final rule with comment period. However, there was an inadvertent typographical error that resulted in the CMI values for certain providers being displayed on the wrong line. Therefore, in this notice, we are correcting some of the entries in Table 2 to reflect the proper CMI values for these providers.

Table 2 also contained errors in wage indices for providers 140B10 and 220074. Each hospital is a part of a multicampus hospital, and each hospital is reclassified to the labor market area where other hospitals associated with its provider number are located. We note that these hospitals were properly assigned the reclassified wage index in the FY 2008 IPPS final rule with comment period. However, in the second FY 2008 IPPS correction notice, Table 2 inadvertently listed each hospital's geographic area wage index rather than the hospital's reclassified wage index. Provider 140B10 was mistakenly assigned 1.0583, the area wage index for Lake County-Kenosha County, IL-WA (CBSA 29404). Therefore, in section III. item 1 of this notice (correction of Table 2), the wage index for provider 140B10 is corrected to 1.0472, the reclassified wage index for Chicago-Naperville-Joliet, IL (CBSA 16974). In addition, provider 220074 was mistakenly assigned 1.0533, the area wage index value for Providence-New Bedford-Fall River, RI-MA (CBSA 39300). Therefore, in section III. item 1 of this notice (correction of Table 2), the wage index for provider 220074 is corrected to 1.1304, the reclassified

wage index for Boston-Quincy, MA (CBSA 14484).

In Tables 2, 4A, and 4C of the FY 2008 IPPS final rule with comment period and the second FY 2008 IPPS correction notice, there was also an inadvertent error in the wage index calculation for two core-based statistical areas (CBSAs). In calculating the wage indices in the FY 2008 IPPS final rule with comment period, a provider was inadvertently included in CBSA 16180 Carson City, NV, when it is actually geographically located in CBSA 39900 Reno-Sparks, NV. The effect of this change is that the wage indices for the eight providers in these two CBSAs will change. Therefore, in section III. of this notice, we are correcting the wage indices for these providers in these two CBSAs in Tables 2, 4A, and 4C. We note that wage index corrections may be retroactive to the beginning of the Federal fiscal year if the requirements specified in § 412.64(k)(2)(ii) are met. The requirements in § 412.64(k)(2)(ii) are as follows: (1) The fiscal intermediary or Medicare Administrative Contractor (FI/MAC) or CMS made an error in tabulating data used for the wage index calculation; (2) the hospital knew about the error in its wage data and requested the FI/MAC and CMS to correct the error both within the established schedule for making corrections to the wage data (which is at least before the beginning of the fiscal year for the applicable update to the hospital inpatient prospective payment system) and using the established process; and (3) CMS agreed before October 1 that the FI/MAC or CMS made an error in tabulating the hospital's wage data and the wage index should be corrected. Since the wage indices errors that are corrected in this notice meet the requirements specified in § 412.64 of our regulations, these corrections are effective October 1, 2007.

Table 4C of the second FY 2008 IPPS correction notice also contained typographical errors in the geographic adjustment factor (GAF) for two CBSAs, CBSA 13820 (Birmingham-Hoover, AL) and CBSA 26620 (Huntsville, AL). Therefore, in this notice, we are correcting the GAFs for these CBSAs. We note that the wage indices for these CBSAs were correct in the second FY 2008 IPPS correction notice and are included in this notice to provide the reader with the wage indices and along with the corrected GAFs.

##### III. Correction of Errors

In FR Doc. 07-4875 of October 10, 2007 (72 FR 57634), make the following corrections:

1. On pages 57637 through 57698, in Table 2—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2006; Hospital Wage Indexes for Federal Fiscal Year 2008; Hospital Average Hourly Wages for Federal Fiscal Years 2006 (2002 Wage Data), 2007 (2003 Wage Data), and 2008 (2004 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, the listed entries are corrected to read as follows:

TABLE 2.—HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2006; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2008; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2006 (2002 WAGE DATA), 2007 (2003 WAGE DATA), AND 2008 (2004 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Case-mix index	FY 2008 wage index	Average hourly wage FY 2006	Average hourly wage FY 2007	Average hourly wage FY 2008	Average hourly wage (3 years)
140001 .....	1.1034	0.8715	22.3170	22.3001	22.2003	22.2726
140002 .....	1.3394	0.8983	24.6954	27.0165	27.4779	26.4101
140007 .....	1.3523	1.0588	28.3482	30.7378	31.4024	30.1866
140008 .....	1.4485	1.0588	28.5297	29.1767	31.8008	29.7872
140B10 <sup>3</sup> .....	.....	1.0472	35.1024	31.8806	40.1360	35.1264
220001 .....	1.1993	1.1355	29.0014	30.6070	31.2316	30.2898
220002 .....	1.3836	1.1488	30.3598	32.4356	33.6649	32.2137
220003 .....	1.1827	.....	22.0549	.....	.....	22.0549
220006 .....	.....	.....	30.8599	30.7673	33.6438	31.7232
220008 .....	1.2814	1.1304	30.1043	31.3385	34.7924	32.1143
220010 .....	1.2471	1.1304	29.7998	30.7804	32.0925	30.8934
220011 .....	1.1289	1.1488	34.4064	34.7655	36.5640	35.2410
220012 .....	1.5403	1.2612	35.7872	37.8763	39.7564	37.8806
220015 .....	1.1909	1.0451	28.3397	29.6315	32.4903	30.2089
220016 .....	1.1221	1.0451	28.0608	30.4813	32.5863	30.3587
220017 .....	1.2751	1.1844	29.7108	31.6170	33.3020	31.5466
220019 .....	1.0840	1.1355	23.2544	24.4009	25.7855	24.4947
220020 .....	1.2035	1.1304	26.5305	28.5288	30.8458	28.6772
220024 .....	1.2983	1.0451	27.3488	28.7342	31.9491	29.2912
220025 .....	1.0403	1.1355	23.0637	25.6478	30.4369	26.1069
220028 .....	.....	.....	32.0980	31.7122	39.3089	34.1922
220029 .....	1.1319	1.1304	28.6970	30.6935	31.6363	30.3492
220030 .....	1.1315	1.0451	24.4289	26.8849	28.1347	26.5400
220031 .....	1.6670	1.1844	34.8183	36.8477	38.9433	36.9174
220033 .....	1.2129	1.1304	28.2539	31.8249	32.3495	30.8022
220035 .....	1.4179	1.1304	28.6238	31.4470	34.8739	32.8577
220036 .....	1.5119	1.1844	31.5184	33.1436	35.9124	33.5798
220046 .....	1.4766	1.0053	28.1396	30.4460	31.4510	30.0573
220049 .....	1.2148	1.1488	27.7518	30.4740	32.4652	30.2584
220050 .....	1.0817	1.0451	26.3768	28.3434	29.5194	28.1065
220051 .....	1.3058	0.9706	29.8380	30.2552	30.1022	30.0683
220052 .....	1.1342	1.1844	29.8577	32.4130	32.3532	31.5202
220058 .....	0.9584	1.1355	24.9642	25.7247	27.8893	26.1881
220060 .....	1.1735	1.1844	32.3362	32.5477	34.7336	33.2260
220062 .....	0.5718	1.1355	24.2779	25.0766	25.4224	24.9426
220063 .....	1.2551	1.1488	27.3968	30.2866	32.9283	30.2274
220065 .....	1.2422	1.0451	26.5513	27.6009	30.1103	28.0583
220066 .....	1.3440	1.0451	27.1317	27.8073	29.9736	28.3106
220067 .....	1.1846	1.1844	29.8911	30.2222	32.4019	30.8648
220070 .....	1.1331	1.1488	31.9283	33.1299	34.2598	33.1439
220071 .....	1.8639	1.1844	32.2936	36.5065	37.4087	35.4748
220073 .....	1.1778	1.1304	31.3566	34.2989	36.0289	33.8953
220074 .....	.....	1.1304	28.4930	30.5607	31.4730	30.1564
290001 .....	1.8514	1.0836	31.1981	36.3129	35.5113	34.2992
290002 .....	0.9058	0.9704	18.3469	17.3876	23.9348	19.4284
290006 .....	1.1835	1.0680	27.9501	31.7301	31.9838	30.5940
290009 .....	1.7155	1.0836	29.8019	36.2724	32.3348	32.7010
290019 .....	1.4106	1.0680	28.6158	29.3650	30.5964	29.5670
290032 .....	1.4261	1.0836	31.7105	31.6711	34.6589	32.6749
290049 .....	1.3649	1.0836	.....	.....	26.0725	26.0725
290051 .....	1.6073	0.9865	.....	.....	.....	.....

<sup>3</sup> This provider, 140B10, is part of a multi-campus provider, 140010, that is comprised of campuses that are located in two different CBSAs. For the FY 2008 wage index, a new provider record was created, designated with a "B" in the 4th position of the provider number, to distinguish between the portion of the wages and hours of the multi-campus facility that is being allocated between the two different CBSAs. Please refer to the FY 2008 final rule, section III.H.1.7 "Geographic Reclassification for Multi-campus Hospitals," for more details on this provision.

2. On pages 57698 through 57721, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas by CBSA—FY 2008, the listed entries are corrected to read as follows:

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)  
FOR URBAN AREAS BY CBSA—FY 2008

CBSA code	Urban area (constituent counties)	Wage index	GAF
16180 .....	Carson City, NV <sup>2</sup> .....	0.9865	0.9907
39900 .....	Carson City, NV. Reno-Sparks, NV .....	1.0836	1.0565
	Storey County, NV. Washoe County, NV.		

<sup>2</sup>Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2008. New Jersey floor is imputed as discussed in the FY 2005 IPPS final rule (69 FR 49109) and in section III.G.2 of the preamble in this final rule.

3. On pages 57722 through 57726, in Table 4C—Wage Index and Capital Geographic Adjustment (GAF) for Hospitals that are Reclassified by CBSA, the listed entries are corrected to read as follows:

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE  
RECLASSIFIED BY CBSA—FY 2008

CBSA code	Area	Wage index	GAF
13820 .....	Birmingham-Hoover, AL .....	0.8690	0.9083
16180 .....	Carson City, NV .....	0.9704	0.9796
26620 .....	Huntsville, AL .....	0.8725	0.9108
39900 .....	Reno-Sparks, NV .....	1.0680	1.0461

#### IV. Waiver of Proposed Rulemaking and the 30-Day Delay in the 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)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the 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.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

For reasons noted below, we find good cause to waive proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This notice merely corrects typographical and technical errors in the addendum of the FY 2008 IPPS final rule with comment period and the second FY 2008 IPPS correction notice and 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 notice is intended to ensure that the FY 2008 IPPS final rule with comment period accurately reflects the policies adopted in the FY 2008 IPPS final rule with comment period. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule or delaying the effective date of these changes is unnecessary and contrary to the public interest.

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

Dated: October 31, 2007.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 07–5513 Filed 11–1–07; 10:12 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 229

[Docket No. 071030629–7630–01]

RIN 0648–XD72

##### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,031 nm<sup>2</sup> (6,966 km<sup>2</sup>), southeast of Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

**DATES:** Effective beginning at 0001 hours November 8, 2007, through 2400 hours November 22, 2007.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM)