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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 419, and 489

[CMS-1159-F3]
RIN 0938-AL35

Medicare Program; Prospective Payment System for Hospital
Outpatient Services; Delay in Effective Date of Calendar Year 2002
Payment Rates and the Pro Rata Reduction on Transitional Pass-Through
Payments

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

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of the payment rates announced for Medicare hospital outpatient services paid under the prospective payment system for calendar year 2002. These rates were announced in a November 30, 2001 final rule (66 FR 59856). In addition, this document delays the effective date of the uniform reduction to be applied to each of the transitional pass-through payments for CY 2002. Certain provisions of the November 30, 2001 rule, as discussed in the SUPPLEMENTARY INFORMATION section, are not delayed.

DATES: The effective date of the amendments to 42 CFR published at 66 FR 59856 (November 30, 2001) remains January 1, 2002, except that the effective date for Sec. 419.32(b)(1)(iii) is delayed indefinitely. Also, the effective date for Sec. 419.62(d), added at 66 FR 55865, published on November 2, 2001, is delayed indefinitely. The effective date of the payment rates announced for Medicare hospital outpatient services paid under the prospective payment system for calendar year 2002, published in the preamble and addenda of the November 30, 2001 final rule, and the uniform reduction to be applied to each of the transitional pass-through payments for CY 2002, published in the preamble and addenda of the November 30, 2001 final rule, is delayed until no later than April 1, 2002. These rates were announced in a November 30, 2001 final rule (66 FR 59856). We will publish a document in the Federal Register announcing the new effective date for the rates and for Sec. 419.32(b)(1)(iii) and Sec. 419.62(d).

FOR FURTHER INFORMATION CONTACT: James L. Hart, (410) 786-0378.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 30, 2001, we published a final rule announcing the final ambulatory payment classification (APC) groups, relative weights, and payment rates under the hospital outpatient prospective payment system (OPPS) for calendar year 2002 (66 FR 59856). As discussed in detail in that document, in setting the APC relative weights, we incorporated 75 percent of the estimated costs for devices eligible for transitional pass-through payments in 2002 into the costs of the APC groups associated with the use of the devices (66 FR 59906).

After the publication of the November 30 final rule, we discovered that the final rule reflects several inadvertent technical errors in which we incorrectly associated specific devices approved for transitional pass-through payments with particular procedures. The effects of the errors we have identified are of a magnitude significant enough to affect not only the estimate of total transitional pass-through payments and the uniform reduction percentage to be applied to transitional pass-through payments in 2002, but also the payment rates for all APCs. Using rates that reflect these errors would result in inappropriate, uneven effects on payments to hospitals. Thus, we believe it would be inappropriate to proceed to make the payment rates published on November 30 effective without further changes.

In order to thoroughly assess the accuracy of the data files containing these errors and to assure that they do not contain further errors that might also have significant implications, an intensive review of the data will be necessary. Because of the time needed for this review, we cannot complete this review and recalculate the rates before the previously published effective date of January 1, 2002. We will, therefore, continue to pay for services covered under the OPPS after January 1 and until no later than April 1, 2002 under the rates in effect on December 31, 2001. We will also continue until no later than April 1, 2002 to make transitional pass-through payments for drugs and devices without applying the uniform reduction announced on November 30, 2001.

Once our review has been completed and the rates corrected, we will publish a final rule with revised rates and a revised calculation of the uniform reduction in transitional pass-through payments. We will

announce the effective date of these changes in that rule.

II. List of OPSS Provisions That Are Not Delayed

This document does not delay the following provisions:

Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 coinsurance limit.

Limitation of coinsurance amount to inpatient hospital deductible amount.

Changes in services covered within the scope of OPSS.

Categories of hospitals subject to, and excluded from, the OPSS.

Criteria for new technology APCs.

Provider-based issues.

Change to the definition of ``single-use devices'' for transitional pass-through payments.

III. Waiver of Notice of Proposed Rulemaking and the 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite public comment on the proposed rule. 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

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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 normally provide a delay of 30 days in the effective date of a final rule. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. We find that a 30-day delay in the effective date of this regulation would be both impracticable and contrary to the public interest. In addition, although this is an ongoing final rule proceeding, we nevertheless have good cause to waive notice and comment. As we have discussed above, the rates that are scheduled to go into effect on January 1, 2002 reflect inadvertent technical errors that have major consequences. We, therefore, do not believe it is appropriate to implement the new rates on January 1, 2002. To proceed with making payments on the basis of significantly incorrect rates would be imprudent and contrary to the public interest. These errors were discovered within 30 days of the January 1, 2002 effective date. Therefore, there is an urgent need to proceed with a delay in the effective date of the 2002 rates, and there is not sufficient time to provide notice of proposed rulemaking and a 30-day notice of the delay.

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

Dated: December 18, 2001.
Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

Approved: December 21, 2001.
Tommy G. Thompson,
Secretary.
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