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## **CMS Rulings**

**Department of Health  
and Human Services**

**Centers for Medicare &  
Medicaid Services**

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Ruling No.: CMS-1423-R

Date: January 1, 2009

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This Ruling sets forth CMS' decision to phase-in the correction of an error in the locality assignments of Austin County and Houston County, Texas. The correction will be phased in over the first three quarters of calendar year (CY) 2009 by making quarterly payments to physicians, practitioners, providers and suppliers furnishing services paid under the Physician Fee Schedule (PFS) and the Ambulance

Fee schedule in Austin County and Houston County, Texas. The phase-in payments will be made following the first, second, and third quarters of CY 2009. The phase-in payments will cease after the third quarter 2009 payment is made.

**MEDICARE PROGRAM**

Medicare Supplemental Medical Insurance (Part B)

**PHASE-IN OF CORRECTION TO PAYMENT LOCALITY ASSIGNMENT FOR  
AUSTIN COUNTY AND HOUSTON COUNTY TEXAS**

**CITATIONS:** Section 1848(e) of the Social Security Act (the Act). July 2, 1996 Physician Fee Schedule (PFS) proposed rule (61 FR 34654 through 34655) and November 22, 1996 PFS final rule with comment period for Calendar Year (CY) 1997 (61 FR 59497). October 31, 1997 PFS final rule with comment period for CY 1998 (62 FR 59260).

**BACKGROUND**

In the CY 1997 PFS proposed rule, as part of the revised payment locality structure that reduced the number of localities from 210 to 89, we proposed to move Austin County, Texas from the South East Rural Texas locality (locality 03) to the Rest of Texas locality (locality 99). In that same rule, we proposed to move Houston County, Texas from the North East Rural Texas locality (locality 02) to the Rest of Texas

locality (locality 99). These proposed locality configuration changes were adopted as final in the CY 1997 PFS final rule with comment period. In the CY 1998 final rule with comment period, we included a listing of the counties included in each of the PFS localities in Addendum G. Per Addendum G, the Austin Metro locality (locality 31) includes only Travis County; Austin County is not included in the Austin Metro locality. Likewise, the Houston Metro locality includes only Harris County; Houston County is not included in the Houston Metro locality. Since neither Austin County nor Houston County is included in the Austin Metro or Houston Metro locality (or in any other specific locality description in Addendum G), both Austin County and Houston County fall within the "all other counties" that are included in the Rest of Texas locality. However, we recently discovered that since 1997, Austin County and Houston County in Texas have been grouped with the Austin Metro and Houston Metro localities, respectively, instead of the Rest of Texas locality as we specified in our final rules. (We note that neither Austin County nor Houston County is contiguous to the Austin Metro or Houston Metro locality). Consequently, physicians, practitioners, and other suppliers furnishing services paid under the PFS in Austin County and Houston County have been paid for those services using the geographic practice cost

indexes (GPCIs) for the Austin Metro and Houston Metro localities, respectively, instead of those for the Rest of Texas locality. Additionally, ambulance fee schedule payments to ambulance providers and suppliers furnishing services in Austin County and Houston County have been calculated using the practice expense (PE) GPCIs for the Austin Metro and Houston Metro localities, respectively (since a portion of the ambulance fee schedule payment is geographically adjusted using the PE GPCIs).

The correction of the locality assignments for Austin County and Houston County will be phased in over the first three quarters of CY 2009 by making quarterly payments to physicians, practitioners, providers, and suppliers furnishing services paid under the Physician Fee Schedule (PFS) and the ambulance fee schedule.

Effective January 1, 2009, we will correct our payment files to include Austin County and Houston County, Texas in the Rest of Texas locality instead of the Austin Metro and Houston Metro localities, respectively. As a result of this correction, payments to physicians, practitioners, and providers and suppliers in these counties under the PFS and ambulance fee schedule will be reduced (because the GPCIs for the rest of Texas locality are lower than the GPCIs for the Austin Metro and Houston Metro). Although the correction of

this error is necessary, we are concerned about the impact of the lower payment rates on the physicians, practitioners, providers and suppliers who furnish services in Austin County and Houston County, as well as the potential impact on beneficiary access to physician and ambulance services in these counties. In order to allow for a period of adjustment, the Medicare contractor for Texas (TrailBlazer) will make a separate phase-in payment to each physician, practitioner, provider and supplier that has furnished PFS or ambulance fee schedule services in Austin County and Houston County, following each of the first three quarters of CY 2009.

Effective January 1, 2009, for services paid under the PFS, the usual claims-based payments will be made for services paid under the PFS, based on the appropriate CY 2009 GPCIs for the Rest of Texas payment locality. A separate phase-in payment will be made through lump sum quarterly payments which will be calculated based upon a percentage add-on to the claims-based payments for the quarter. For services paid under the PFS, the percentage add-on reflects one-half of the difference between the CY 2009 GAF for the Rest of Texas locality and the CY 2009 GAF for the Austin Metro and Houston Metro localities, respectively. This percentage add-on will be applied to the amount paid to each physician, practitioner, and supplier during the quarter. We have decided to use the

GAFs for each of the respective localities as a proxy to calculate the average payment amount difference between the Rest of Texas locality and the Austin Metro and Houston Metro localities. Using GAFs, the percentage add-on for services paid under the PFS will be 2.2 percent for physicians, practitioners, and suppliers in Austin County and 3.5 percent for physicians, practitioners, and suppliers in Houston County.

Effective January 1, 2009 for services paid under the ambulance fee schedule, the usual claims-based payments will be made for services furnished in Austin County and Houston County using the CY 2009 PE GPCI for the Rest of Texas locality. Although we use the GAFs as a proxy to calculate the average payment amount differences between the Rest of Texas locality and the Austin Metro and Houston Metro localities under the PFS, no similar identifiable proxy is available for services paid under the ambulance fee schedule.

Therefore, the separate phase-in payment for ambulance providers and suppliers will be equal to one-half of the difference between the actual payments under the ambulance fee schedule during the quarter (calculated based upon the PE GPCI for Rest of Texas locality) and the payment amounts calculated as if they had been based upon the PE GPICIs for the Austin Metro and Houston Metro localities, respectively.

The quarterly phase-in payments will apply to PFS and ambulance fee schedule services furnished on or after January 1, 2009 and be calculated based upon the amount paid during the quarter. PFS and ambulance fee schedule services furnished in Austin County and Houston County Texas with dates of service prior to January 1, 2009 will be paid based on the Austin Metro and Houston metro localities, respectively, and will not be included in the quarterly phase-in payment calculations.

The quarterly phase-in payments will be made following the first, second and third quarters of CY 2009. The phase-in payments will cease after the third quarter 2009 payment is made. We will issue a technical direction letter instructing TrailBlazer on how to administer the quarterly payments.

**EFFECTIVE DATE**

This Ruling is effective January 1, 2009.

Dated: December 12, 2008

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**Kerry Weems**

Acting Administrator,

Centers for Medicare & Medicaid

Services.