done, CMS knows that the approved CAP vendor will not be under contract for the applicable quarterly update.

(v) The payment amount weights must be calculated based on the more recent of the following:

(A) Contract bidding weights.

(B) CAP claims data.

(vi) The payment limit must be determined using the most recent payment limits available to CMS under section 1847A of the Act.

(vii) The following payment amount update calculation must be applied for the group of all drugs for which a composite bid is required.

(A) The most recent previous composite payment amount for the group is updated by—

(1) Calculating the percent change in reasonable net acquisition costs for each approved CAP vendor;

(2) Calculating the median of all participating approved CAP vendors’ adjusted CAP payment amounts; and

(3) Limiting the payment as described in paragraph (c)(1) of this section.

(B) The median percent change, subject to the limit described in paragraph (c)(1) of this section, must be the update percentage for that quarter.

(C) The single update percentage must be applied to the payment amount for each drug in the group of drugs for which a composite bid is required in the category.

(viii) The following payment amount update calculation must be applied for each of the following items: Each HCPCS code not included in the composite bid list; Each HCPCS code added to the drug list during the contract period; and each drug that has not yet been assigned a HCPCS code, but for which a HCPCS code will be established.

(A) The most recent previous payment amount for each drug must be updated by calculating the percent change in reasonable net acquisition costs for each approved CAP vendor, then calculating the median of all participating approved CAP vendors’ adjusted CAP payment amounts.

(B) The median percent change calculated for each drug, subject to the limit described in paragraph (c)(1) of this section, must be applied to the payment amount for each drug.

(3) Alternative payment amount.

* * *

(f) * * *

(2) * * *

(v) On or after January 1, 2010, the proposed addition of drugs with similar therapeutic uses to drugs already supplied under the CAP by the approved CAP vendor(s).

(g) Deletion of drugs on an approved CAP vendor’s CAP drug list. Deletion of drugs on an approved CAP vendor’s CAP drug list due to unavailability requires a written request and approval as described in paragraphs (f)(3)(i) through (iii) and (f)(4) of this section.

§ 414.908 Competitive acquisition program.

(a) * * *

(b) * * *

(c) * * *

(xii) Agrees not to transport CAP drugs from one practice location or place of service to another location except in accordance with a written agreement between the participating CAP physician and the approved CAP vendor that requires that drugs are not subjected to conditions that will jeopardize their integrity, stability, and/or sterility while being transported.

* * * * *

24. Section 414.914 is amended by revising paragraph (f)(12) to read as follows:

§ 414.914 Terms of contract.

* * * * *

(f) * * *

(12) Supply CAP drugs upon receipt of a prescription order to all participating CAP physicians who have selected the approved CAP vendor, except when the conditions of paragraph (h) of this section or § 414.916(b) of this subpart are met;

* * * * *

25. Section 414.916 is amended by—

A. Redesignating paragraph (b)(4) as (b)(5).

B. Adding new paragraph (b)(4).

The addition reads as follows:

§ 414.916 Dispute resolution for vendors and beneficiaries.

* * * * *

(b) * * *

(4) Upon notification from CMS of a participating CAP physician’s suspension from the program, the approved CAP vendor must cease delivery of CAP drugs to the suspended participating CAP physician until the suspension has been lifted.

* * * * *

26. Section 414.917 is amended by revising paragraph (b)(4) to read as follows:

§ 414.917 Dispute resolution and process for suspension or termination of approved CAP contract and termination of physician participation under exigent circumstances.

* * * * *

(b) * * *

(4) The approved CAP vendor may appeal that termination by requesting a reconsideration. A determination must be made as to whether the approved CAP vendor has been meeting the service and quality obligations of its CAP contract. The approved CAP vendor’s contract will remain suspended during the reconsideration process.
(iii) A listing of all individuals who have substantively participated in the review or disposition of the request.
(iv) Minutes and voting records of meetings for the review and disposition of the request.

Publicly transparent process for identifying potential conflicts of interests means that process provides that the following information is identified and made timely available in response to a public request for a period of not less than 5 years, coincident with the compendium’s publication of the related recommendation:

(i) Direct or indirect financial relationships that exist between individuals or the spouse or minor child of individuals who have substantively participated in the development or disposition of compendia recommendations and the manufacturer or seller of the drug or biological being reviewed by the compendium. This may include, for example, compensation arrangements such as salary, grant, contract, or collaboration agreements between individuals or the spouse or minor child of individuals who have substantively participated in the review and disposition of the request and the manufacturer or seller of the drug or biological being reviewed by the compendium.

(ii) Ownership or investment interests between individuals or the spouse or minor child of individuals who have substantively participated in the development or disposition of compendia recommendations and the manufacturer or seller of the drug or biological being reviewed by the compendium.
(b) * * *

(v) Considers whether the publication that is the subject of the request meets the definition of a compendium in this section.

PART 415—SERVICES FURNISHED BY PHYSICIANS IN PROVIDERS, SUPERVISING PHYSICIANS IN TEACHING SETTINGS, AND RESIDENTS IN CERTAIN SETTINGS

§ 415.178 Anesthesia services.
(a) General rule. (1) For services furnished prior to January 1, 2010, an unreduced physician fee schedule payment may be made if a physician is involved in a single anesthesia procedure involving an anesthesia resident or a teaching anesthesiologist.

(b) * * *

(ii) Have successfully completed a nationally-accredited educational program for respiratory therapists.

(iii) Be eligible to take the registry examination administered by the National Board for Respiratory Care for respiratory therapists; or

(iv) Have equivalent training and experience as determined by the National Board for Respiratory Care.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

32. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

33. Section 498.2 is amended by adding paragraph (13) to the definition of “supplier” to read as follows:

§ 498.2 Definitions.

* * * * *

Suppliers (13) A site approved by CMS to furnish intensive cardiac rehabilitation services.

Authority: Catalog of Federal Domestic Assistance Programs. No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.


Charlene Frizzera,
Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 29, 2009.

Kathleen Sebelius,
Secretary.

Note: These addenda will not appear in the Code of Federal Regulations.

Addendum A: Explanation and Use of Addendum B

The addenda on the following pages provide various data pertaining to the Medicare fee schedule for physicians’ services furnished in 2010. Addendum