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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS-1529-CN]

RIN 0938-A030

Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; Corrections

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors in the "Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Annual Payment Rate Updates, and Policy Changes; and Hospital Direct and Indirect Graduate Medical Education Policy Changes; Final Rule" (hereinafter referred to as the RY 2008 LTCH PPS final rule) that appeared in the May 11, 2007 **Federal Register**. We are correcting the high cost outlier (HCO) fixed-loss amount

that is effective for long-term care hospital (LTCH) prospective payment system (PPS) payments beginning on or after July 1, 2007 from \$22,954 to \$20,738. The incorrect fixed-loss amount was determined due to a typographical error in the computer programming. We are also correcting figures in Table 9 and Table 11 since the incorrect figures originally published originated from the same typographical error. We are making additional conforming changes to the preamble of the final rule which were necessary as a result of the correction of the fixed-loss amount and the figures in Tables 9 and 11.

EFFECTIVE DATE: July 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Tzvi Hefter, (410) 786-4487 (General information).

Elizabeth Truong, (410) 786-6005 (Federal rate update, budget neutrality, other adjustments, and calculation of the payment rates).

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 07-2206 (72 FR 26870), there were technical errors stemming from a typographical error in the computer programming of the payment simulation program 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 RY 2008 LTCH PPS final rule. Accordingly, the corrections are effective July 1, 2007.

II. Summary of Errors

In the RY 2008 LTCH PPS final rule, we incorrectly calculated the HCO fixed-loss amount. Specifically, we discovered that there was a typographical error in one of the numeric inputs used in the payment simulation program and this resulted in an understating of the nonlabor share of payments to LTCHs. Since the nonlabor related share is used in the calculation of the fixed-loss amount, this error caused the fixed-loss amount to be inaccurate. We corrected the typographical error in the payment simulation program and computed the payment using the same payment methodology that was discussed and used in the final rule. Consequently, the corrected final fixed-loss amount for RY 2008 is \$20,738. This document replaces all incorrect HCO fixed-loss amounts references in the RY 2008 LTCH PPS final rule with the corrected fixed-loss amount of \$20,738.

Furthermore, the payment simulation program was used in the analysis of payment changes for the impact section of the RY 2008 LTCH PPS final rule. Specifically, Tables 9 and 11 of the final rule address the projected impact of payment

rate policy changes by comparing payments based on the policies that were in effect for RY 2007 to LTCH PPS payments based on policies to be in effect for RY 2008, including the RY 2008 HCO fixed-loss amount (72 FR 26870, 26977 through 26978, and 26985 through 26986). In this correction notice, we are providing the revised Tables 9 and 11 to reflect the changes resulting from correcting the typographical error in the payment simulation program. We note that it was necessary to revise only two columns in Table 11. Correcting the typographical error for the nonlabor share generally reduced the estimated impact on estimated payments per discharge from RY 2007 to RY 2008 due to finalized changes to the area wage adjustment (column 7).

In addition, applying the revised fixed-loss amount, which is \$2,216 lower than the incorrect fixed-loss amount applied in the RY 2008 LTCH PPS final rule, generally reduced the estimated impact on estimated payments per discharge from RY 2007 to RY 2008 (column 9). In addition, we are making conforming changes to the preamble of the final rule (as indicated in Section III. of this correction notice) that are necessary as a result of the correction of the fixed-loss amount and Tables 9 and 11.

III. Correction of Errors

In FR Doc. 07-2206 (72 FR 26870), make the following

corrections:

1. On page 26898,
 - a. In the 2nd column, 1st full paragraph, lines 25 and 30, the figure "\$22,954" is corrected to read "\$20,738".
 - b. In the 3rd column, 2nd full paragraph, lines 4 and 11, the figure "\$22,954" is corrected to read "\$20,738".
2. On page 26899,
 - a. In the 1st column,
 - (1) In the 1st partial paragraph,
 - (a) Line 26, the figure "3.8" is corrected to read "1.2".
 - (b) Line 42, the figure "1.0" is corrected to read "0.5".
 - (c) Lines 46 through 48, the sentence "We also project an estimated 2.5 percent decrease in estimated payments per discharge from RY 2007 to RY 2008 due" is corrected to read, "We also project an estimated 0.4 percent decrease in estimated payments per discharge from RY 2007 to RY 2008 primarily due".
 - (2) In the 1st full paragraph, line 2, the figure "\$22,954" is corrected to read "\$20,738".
 - b. In the 2nd column,
 - (1) In the 1st partial paragraph, line 14, the figure "10" is corrected to read "8".

(2) In the 1st partial paragraph, line 31, the figure "10" is corrected to read "8.5".

3. On page 26900, in the 1st column, in the 3rd full paragraph, in the 2nd line from the bottom, the figure "\$22,954" is corrected to read "\$20,738".

4. On page 26977, in the 3rd column, in the 1st partial paragraph, lines 27 and 28, the phrase "approximately \$156 million (or about 3.8 percent)." is corrected to read, "approximately \$50 million (or about 1.2 percent). In addition, applying the case-mix adjustment (2.49 percent) to account for the increase in payments in FY 2005, the result is estimated to be an impact of approximately \$100 million."

5. On pages 26977 through 26978, Table 9: Estimated Impact of the Provisions of this Final Rule is corrected to read as follows:

TABLE 9: Estimated Impact of the Provisions of this Final Rule¹

Policy	Estimated Percent Change in Estimated Aggregate LTCH PPS Payments
Payment Rate and Policy Changes	
Changes to the Federal Rate ²	0.6%
Changes to the Area Wage Adjustment	-0.5%
Revision of the SSO Policy	-0.9%
Adjustment of the High Cost Outlier Threshold ³	-0.4%

Subtotal ⁴	-1.2%
Expansion of the "25 Percent" Policy ⁵	0%
Total ⁶ (-1.2% + 0%)	-1.2%

¹ Percent change in estimated aggregate LTCH PPS payments from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year based on the best available data for 377 LTCHs.

² As discussed in greater detail in section XV.B.4. of this regulatory impact analysis, about 34 percent of all LTCH cases are projected to receive a payment under the existing SSO policy that is based either on the estimated cost of the case or the "IPPS comparable amount" (rather than the Federal rate). Therefore, the percent change in estimated aggregate LTCH PPS payments due to the changes to the Federal rate, 0.61 percent, is slightly less than the update to the Federal rate of 0.71 percent.

³ This estimated 0.4 percent decrease in estimated payments per discharge from RY 2007 to RY 2008 is primarily due to the changes in the fixed-loss amount resulting from the use of more recent LTCH data to estimate the cost of each LTCH case.

⁴ We also note that the estimated percent change for all payment rate and policy changes may not exactly equal the sum of the estimated percent change for the changes to the Federal rate, the changes to the area wage adjustment and the revision of the SSO policy due to the effect of estimated changes in aggregate HCO payments, as well as other interactive effects that cannot be isolated.

⁵ Expansion of the existing special payment provision for co-located LTCHs (HwHs and satellites of LTCHs) at existing \$412.534 to certain situations not presently covered by existing \$412.534 for subclause (I) LTCHs (as discussed in section V.B. of the preamble of this final rule).

⁶ Total estimated impact of the provisions of this final rule (that is, sum of the estimated impact of the payment rate and policy change, including the revision of the SSO policy, and the estimated impact of the expansion of the "25 percent" policy).

6. On page 26978,

a. In the 1st column, 1st paragraph, lines 6 and 7, the phrase "We note the \$156 million (or 3.8 percent)" is corrected to read, "We note the approximately \$50 million (or 1.2 percent)".

(b) In the 2nd column,

(1) In the 2nd full paragraph,

(a) Line 3, the figure "3.8" is corrected to read "1.2".

(b) Line 4, the figure "\$156 million" is corrected to read "approximately \$50 million".

(c) Line 9 the figure "3.8" is corrected to read "1.2".

b. In the 3rd column, in the 1st partial paragraph, line 7, the figure "3.8" is corrected to read "1.2".

7. On page 26979,

a. In the 1st column,

(1) In the 1st full paragraph,

(a) Line 2, the figure "2.5" is corrected to read "0.4".

(b) Lines 4 and 5, the phrase "discharge from RY 2007 to RY 2008 due to the changes in" is corrected to read "discharge from RY 2007 to RY 2008 due primarily to the changes in".

b. In the 2nd column,

(1) In the 1st partial paragraph,

(a) Line 14, the figure "9" is corrected to read "8.5".

(b) Line 28, the figure "10.3" is corrected to read "9.6".

(c) Line 42, the figure "22,954" is corrected to read

"\$20,738".

(d) Lines 44 and 45, the phrase "estimated aggregate LTCH PPS payments of 2.5 percent, we believe that" is corrected to read "estimated aggregate LTCH PPS payments of 0.4 percent, we believe that".

(2) In the 1st full paragraph, line 5, the figure "3.8" is corrected to read "1.2".

c. In the 3rd column, in the 1st partial paragraph, lines 2 and 3, the phrase "finalizing a 3.8 percent decrease to the Federal rate" is corrected to read "finalizing an estimated 1.2 percent decrease in estimated LTCH PPS payments".

8. On page 26980,

a. In the 1st column, 1st full paragraph, line 21, the figure "1.0" is corrected to read "0.5".

b. In the 2nd column, 2nd full paragraph, line 5, the figure "3.8" is corrected to read "1.2".

c. In the 3rd column, 2nd full paragraph,

(1) Line 4, the figure "3.8" is corrected to read "1.2".

(2) Line 5, the figure "\$156 million" is corrected to read "\$50 million".

9. On page 26981, in the 1st column, 1st partial paragraph, line 2, the figure "6.2" is corrected to read

"3.1".

10. On page 26982,

a. In the 1st column, 1st full paragraph,

(1) Line 2, the figure "2.8" is corrected to read "0.7".

(2) Lines 4 and 5, the phrase "per discharge to rural LTCHs from RY 2007 to RY 2008 due to the changes in" is corrected to read "per discharge to rural LTCHs from RY 2007 to RY 2008 due primarily to the changes in".

(3) Line 29, the figure "\$22,954" is corrected to read "\$20,738".

(4) Lines 32 and 33, the phrase "payments to rural hospitals by 2.8 percent, we believe that this is" is corrected to read "payments to rural LTCHs, we believe that this is".

b. In the 2nd column, in the 1st full paragraph, lines 26 and 39, the figure "6.2" is corrected to read "3.1".

11. On page 26984, in the 2nd column, 1st partial paragraph, line 4, the figure "\$22,954" is corrected to read "\$20,738".

12. On pages 26985 and 26986, Table 11: Projected Impact of Payment Rate and Payment Rate Policy Changes to LTCH PPS Payments for RY 2008 is corrected to read as follows:

TABLE 11: Projected Impact of Payment Rate and Payment Rate Policy Changes to LTCH PPS Payments for RY 2008

LTCH Classification	Number of LTCHs	Number of LTCH PPS Cases	Average RY 2007 LTCH PPS Rate Year Payment Per Case	Average RY 2008 LTCH PPS Rate Year Payment Per Case	Percent Change in Estimated Payments Per Discharge from RY 2007 to RY 2008 for Finalized Changes to the Federal Rate	Percent Change in Estimated Payments Per Discharge from RY 2007 to RY 2008 for Finalized Changes to the Area Wage Adjustment	Percent Change in Estimated Payments Per Discharge from RY 2007 to RY 2008 for Finalized Changes to the SSO Policy	Percent Change in Payments Per Discharge from RY 2007 to RY 2008 for All Changes
ALL PROVIDERS	377	129,812	\$32,968.71	\$32,562.05	0.6	-0.5	-0.9	-1.2
By Location:								
RURAL	23	5,300	\$27,010.90	\$26,162.27	0.7	-2.2	-0.9	-3.1
URBAN	354	124,512	\$33,222.31	\$32,834.47	0.6	-0.4	-0.9	-1.2
LARGE	182	75,064	\$34,591.56	\$34,353.33	0.6	-0	-0.9	-0.7
OTHER	172	49,448	\$31,143.73	\$30,528.78	0.6	-1.2	-0.9	-2
By Participation Date:								
BEFORE OCT. 1983	16	6,989	\$28,729.04	\$28,674.54	0.6	0.2	-0.6	-0.2
OCT. 1983 - SEPT. 1993	44	20,751	\$34,169.65	\$33,823.79	0.6	-0.2	-0.9	-1
OCT. 1993 - SEPT. 2002	203	73,460	\$32,818.53	\$32,447.29	0.6	-0.5	-0.8	-1.1
AFTER OCTOBER 2002	108	27,949	\$33,597.54	\$32,959.21	0.6	-0.9	-1.1	-1.9
UNKNOWN PARTICIPATION DATE	6	663	\$30,205.22	\$30,024.91	0.6	-0.5	-0.7	-0.6
By Ownership Type:								
VOLUNTARY	83	25,732	\$32,181.69	\$31,691.50	0.6	-0.6	-1	-1.5
PROPRIETARY	254	97,294	\$33,104.72	\$32,737.43	0.6	-0.5	-0.9	-1.1
GOVERNMENT	14	2,694	\$36,419.51	\$35,676.30	0.6	-0.8	-0.9	-2
UNKNOWN OWNERSHIP TYPE	23	4,027	\$32,404.90	\$31,809.07	0.6	-0.7	-1	-1.8

LTCH Classification	Number of LTCHs	Number of LTCH PPS Cases	Average RY 2007 LTCH PPS Rate Year Payment Per Case	Average RY 2008 LTCH PPS Rate Year Payment Per Case	Percent Change in Estimated Payments Per Discharge from RY 2007 to RY 2008 for Finalized Changes to the Federal Rate	Percent Change in Estimated Payments Per Discharge from RY 2007 to RY 2008 for Finalized Changes to the Area Wage Adjustment	Percent Change in Estimated Payments Per Discharge from RY 2007 to RY 2008 for Finalized Changes to the SSO Policy	Percent Change in Payments Per Discharge from RY 2007 to RY 2008 for All Changes
By Census Region:								
NEW ENGLAND	16	9,634	\$27,887.51	\$27,850.12	0.6	0.3	-0.7	-0.1
MIDDLE ATLANTIC	30	8,114	\$33,652.40	\$33,219.72	0.6	-0.7	-0.9	-1.3
SOUTH ATLANTIC	47	13,402	\$36,643.93	\$36,003.38	0.6	-0.9	-1	-1.7
EAST NORTH CENTRAL	69	19,477	\$35,747.81	\$35,504.41	0.6	-0	-0.9	-0.7
EAST SOUTH CENTRAL	28	7,848	\$33,545.58	\$32,685.39	0.6	-1.7	-1	-2.6
WEST NORTH CENTRAL	18	5,337	\$35,484.45	\$34,896.78	0.6	-0.7	-0.9	-1.7
WEST SOUTH CENTRAL	129	50,983	\$29,564.84	\$28,976.97	0.6	-1.2	-0.9	-2
MOUNTAIN	22	5,768	\$35,135.25	\$35,239.57	0.6	1.1	-1.1	0.3
PACIFIC	18	9,249	\$41,954.57	\$42,350.72	0.6	1.5	-0.7	0.9
By Bed Size:								
BEDS: 0-24	32	4,998	\$30,275.32	\$29,713.64	0.7	-0.8	-0.9	-1.9
BEDS: 25-49	196	45,487	\$33,230.63	\$32,686.65	0.6	-0.9	-1	-1.6
BEDS: 50-74	65	24,371	\$33,247.51	\$32,865.03	0.6	-0.4	-0.9	-1.2
BEDS: 75-124	48	22,364	\$33,634.49	\$33,243.59	0.6	-0.4	-0.8	-1.2
BEDS: 125-199	21	17,716	\$33,285.43	\$32,909.60	0.6	-0.2	-0.9	-1.1
BEDS: 200 +	15	14,876	\$31,237.88	\$31,203.20	0.6	0.3	-0.7	-0.1
UNKNOWN BED SIZE	0	0	\$0.00	\$0.00	0	0	0	0

13. On page 26986, in the 2nd column, in the 1st full paragraph, line 4, the figure, "3.8" is corrected to read "1.2".

14. On page 26987, in the 3rd column,

(a) In the 1st partial paragraph, line 23, the figure "\$22,954" is corrected to read "\$20,738".

b. In the 1st full paragraph,

(1) Line 13, the figure "6.2" is corrected to read "3.1".

(2) Line 14, the figure "3.7" is corrected to read "1.2".

c. In the 3rd full paragraph,

(1) Line 2, the figure "3.2" is corrected to read "0.7".

(2) Line 7, the figure "4.7" is corrected to read "2".

15. On page 26988,

a. In the 1st column,

(1) In the 1st full paragraph, lines 2 and 3, the phrase, "experience a lower than average decrease in estimated payments per" is corrected to read, "experience no change in estimated payments per".

(2) In the 3rd full paragraph, line 12, the figure, "3.8" is corrected to read "1.1".

(3) In the 4th full paragraph,

(a) Line 6, the figure, " 3.4" is corrected to read, "1.0".

(b) Line 18, the figure "0.8" is corrected to read "0.2".

b. In the 2nd column,

(1) The 1st full paragraph is corrected in its entirety to read as follows:

"LTCHs that began participating before October 1983 are projected to experience a 0.2 percent increase in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year (see Table 11). We are projecting that LTCHs that began participating in Medicare before October 1983 would experience an increase in estimated payments for RY 2008 as compared to RY 2007 primarily because we are projecting that LTCHs in this participation date category would experience a decrease in estimated payments in RY 2008 as compared to RY 2007 because several of these LTCHs are located in areas that have a wage index value of greater than 1.0, as explained above.

(2) In the 2nd full paragraph,

(a) Line 7, the figure "4.5" is corrected to read as "1.9".

(b) Line 19, the figure "1.5" is corrected to read as "0.9".

c. In the 3rd column,

(1) In the 1st partial paragraph, line 10, the figure "4.5" is corrected to read as "2.0".

(2) In the 1st full paragraph, line 5, the figure "4" is corrected to read as "1.5".

(3) In the 2nd full paragraph, line 6, the figure "3.7" is corrected to read as "1.1".

16. On page 26989,

a. In the 1st column,

(1) In the 1st partial paragraph,

(a) Lines 1 through 3, the phrase "East South Central and West South Central regions (5.3 percent and 4.8 percent, respectively; see" is corrected to read "East South Central region (2.6 percent, see".

(b) Lines 9 through 12, the phrase "adjustment (2.3 percent for the East South Central region, and 1.7 percent for the West South Central region, as shown in Table 11)" is corrected to read "adjustment (1.7 percent, as shown in Table 11)".

(c) Line 15, the phrase "and the West South Central regions" is removed.

b. In the 3rd full paragraph,

(1) Line 10, the figure "4.7" is corrected to read "1.9".

(2) Line 12, the figure "4.3" is corrected to read "1.6".

c. In the 2nd column

(1) In the 1st partial paragraph, line 10, the figure "2.5" is corrected to read "0.1".

(2) In the 1st full paragraph,

(a) Lines 12 and 13, the phrase "about \$156 million" is corrected to read "approximately \$50 million".

(b) Line 13, the figure "3.8" is corrected to read "1.2".

17. On page 26991, in the 1st column,

(a) In the 1st full paragraph, lines 5 and 6, the phrase "payments of \$156 million (or about 3.8 percent)" is corrected to read "payments of approximately \$50 million (or about 1.2 percent)"

(b) In Table 12, in the 2nd row, in the 2nd column, line 4, the figure "\$156" is corrected to read "\$50".

III. Waiver of Proposed Rulemaking and Delay in 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 correction 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.

This correction notice corrects technical errors in the RY 2008 LTCH PPS final rule. It does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. We believe it is unnecessary to undergo notice and comment procedures and have a 30-day delay in effective date of these technical changes because they merely ensure that the RY 2008 LTCH PPS final rule accurately reflects the policies that were adopted in that final rule, final policies which were previously subjected to notice and comment procedures and that have had more than a 30 day-delayed effective date. We believe it

impracticable to engage in notice and comment procedures and have a 30-day delayed effective date for these technical corrections as the correct payment rates must be effective July 1, 2007.

Therefore, we are waiving proposed rulemaking and the 30-day delay in effective date for the technical corrections in this correction notice.

CMS-1529-CN

Authority: (Catalog of Federal Domestic Assistance Program

No. 93.773, Medicare--Hospital Insurance; and Program

No. 93.774, Medicare--Supplementary Medical Insurance
Program)

Dated: _____

Ann C. Agnew,

Executive Secretary to
the Department.

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