

Small Entity Compliance Guide

Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010

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The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, P.L. 104-121, as amended by P.L. 110-28, May 25, 2007) contains requirements for issuance of “small entity compliance guides.” Guides are to explain what actions affected entities must take to comply with agency rules. Such guides must be prepared when agencies issue final rules for which agencies were required to prepare a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (RFA).

The complete text of this final rule with comment period can be found on the CMS Web site on the Physician Center page under the Spotlight section at:
<http://www.cms.hhs.gov/center/physician.asp>

This final rule with comment period implements changes to the physician fee schedule (PFS) and other Medicare Part B payment policies to ensure that our payment systems are updated to reflect changes in medical practice and the relative value of services. It also implements or discusses certain provisions of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008. Specifically this rule discusses refinements to resource-based practice expense (PE) relative value units (RVUs), including changes to data sources; geographic practice cost indices (GPCI); updating malpractice RVUs; requests for additions to the list of telehealth services; several coding issues, including elimination of consultation codes for Medicare payment; potentially misvalued codes; payment for covered outpatient drugs and biologicals; the competitive acquisition program (CAP) for part B drugs ; a technical correction related to ambulance services; a clinical lab fee schedule clarification; payment for renal dialysis services; a change to our qualifications for respiratory therapists in comprehensive outpatient rehabilitation facilities; physician self referral issues; durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) related issues; the chiropractic services demonstration; therapy caps and the five year review of work RVUs. It also addresses certain MIPPA provisions concerning: the copayment for outpatient psychiatric services; the physician quality reporting initiative; the physician resource use measurement and reporting program; a value based purchasing program for physicians and other practitioners ; incentives for e-prescribing; implementation of accreditation standards for suppliers furnishing the technical component of advanced diagnostic imaging services; improvements for Medicare anesthesia teaching programs; payment and coverage of cardiac rehabilitation services and pulmonary rehabilitation services; repeal of transfer of title for oxygen equipment; coverage of kidney disease patient education services; and a drug compendia issue.

This final rule with comment period also finalizes the calendar year (CY) 2009 interim relative value units (RVUs) and issues interim RVUs for new and revised codes for CY 2010. In addition, in accordance with the statute, it announces that: the update to the physician fee schedule conversion factor is -21.2 percent for CY 2010; the preliminary estimate for the sustainable growth rate for CY 2010 is -8.8 percent; and, the conversion factor (CF) for CY 2010 is \$28.4061.

For purposes of the RFA, physicians, NPPs, and suppliers including IDTFs are considered small businesses if they generate revenues of \$7 million or less based on SBA size standards. Approximately 95 percent of physicians are considered to be small entities. There are over 1 million physicians, other practitioners, and medical suppliers that receive Medicare payment under the PFS.

Approximately 85 percent of suppliers of DMEPOS are considered small businesses according to the SBA size standards. We estimate that approximately 105,000 DMEPOS suppliers are enrolled in Medicare currently and bill Medicare for DMEPOS each year. Also, approximately 80 percent of clinical diagnostic laboratories are considered small businesses according to the SBA size standards. Ambulance providers and suppliers (for purposes of the RFA) are also considered to be small entities.

In addition, most end stage renal disease (ESRD) facilities are considered small entities for purposes of the RFA, either based on nonprofit status or by having revenues of \$7 million to \$34.5 million or less in any year. We note that a considerable number of ESRD facilities are owned and operated by large dialysis organizations (LDOs) or regional chains, which would have total revenues more than \$34.5 million in any year if revenues from all locations are combined. However, the claims data we use to estimate payments for the RFA and regulatory impact analysis does not identify which dialysis facilities are parts of an LDO, regional chain, or other type of ownership. Each individual dialysis facility has its own provider number and bills Medicare using this number. Therefore, we consider each ESRD to be a small entity for purposes of the RFA.

The effects of this final rule with comment vary considerably by provider type. It does substantially reduce payments under the PFS as a result of applying the update to the CF of -21.2 percent.

This rule imposes no direct Federal compliance requirements on affected entities. In order to assist physicians and others in understanding and adapting to changes in Medicare billing and payment procedures and amounts, we have developed a Web page for physician services that includes substantial downloadable explanatory materials at <http://www.cms.hhs.gov/center/physician.asp>. Additional material on the PFS can also be found at the Web page: <http://www.cms.hhs.gov/PhysicianFeeSched/>. There are also Medicare Learning Network articles related to the physician fee schedule at: http://www.cms.hhs.gov/MLNMattersArticles/01_Overview.asp#TopOfPage.

Information for other issues discussed in this final rule such as DMEPOS and CAP also available on the CMS Web page at <http://www.cms.hhs.gov/home/medicare.asp>.

The Internet Only Manual at <http://www.cms.hhs.gov/Manuals/> is also updated to reflect changes in policy that may be included in the rule.