

expenditures than would have been paid if the same procedure had been performed on an inpatient basis in a hospital. Section 1833(i)(2)(A)(iii) of the Act requires that payment for insertion of an intraocular lens (IOL) include an allowance for the IOL that is reasonable and related to the cost of acquiring the class of lens involved.

Section 13531 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Pub. L. 103-66), prohibited us from providing for any inflation update in the payment amounts for ASCs determined under section 1833(i)(2)(A) of the Act for fiscal years (FYs) 1994 and 1995. Section 13533 of OBRA 1993 established \$150 as the amount of payment allowed for an IOL inserted during or subsequent to cataract surgery in an ASC on or after January 1, 1994, and before January 1, 1999. Section 141(a)(1) of the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103-432) amended section 1833(i)(2)(A)(i) of the Act to require that a quinquennial survey of ASCs be taken beginning not later than January 1, 1995.

Section 141(a)(2) of SSAA 1994 added section 1833(i)(2)(C) to the Act to provide that, beginning with FY 1996, there be an adjustment for inflation during fiscal years when we do not update ASC rates based on actual audited costs determined by surveying a representative sample of facilities. Section 1833(i)(2)(C) of the Act provides that ASC payment rates are to be increased by the percentage increase in the consumer price index for urban consumers (CPI-U), that we estimate for the 12-month period ending with the midpoint of the year involved, beginning with FY 1996. Section 141(a)(3) of SSAA 1994 amended section 1833(i)(1) of the Act to require us to consult with appropriate medical organizations in specifying the procedures that constitute the ASC list.

Section 141(b) of SSAA 1994 requires us to establish a process for reviewing the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act for IOLs with respect to a class of new-technology IOLs. That process was the subject of a separate notice of proposed rulemaking entitled *Adjustment in Payment Amounts for New Technology Intraocular Lenses* published in the **Federal Register** on September 9, 1997 (62 FR 46698).

Section 4555 of BBA 1997 amended section 1833(i)(2)(C) of the Act to limit the annual adjustment of ASC payment rates provided for in that paragraph to the CPI-U increase reduced by 2.0 percentage points (but not below zero) for fiscal years 1998 through 2002.

B. Extensions of Comment Periods for Proposed Rule

On June 12, 1998, we published in the **Federal Register** a proposed rule that would revise the ratesetting methodology and payment rates and update the list of surgical procedures payable by Medicare for ASCs. The closing date of the comment period for the June 12, 1998 proposed rule was extended several times. The first extension notice was published in the **Federal Register** August 14, 1998 (63 FR 43655). The reason for the extension was that, due to the complexity and scope of the proposed rule, numerous members of the industry and professional associations requested more time to analyze the potential consequences of the rule. The closing date was extended to September 10, 1998.

On September 8, 1998, a proposed rule outlining the provisions of a Medicare prospective payment system (PPS) for hospital outpatient services was published in the **Federal Register** (63 FR 47551). On October 1, 1998 a second extension notice extending the comment period for the June 12, 1998 proposed rule was published in the **Federal Register** (63 FR 52663) with a new closing date of November 9, 1998. This second extension notice was issued because members of trade and professional associations urged us to postpone implementing the changes contained in the June 12, 1998 ASC proposed rule from October 1, 1998 to January 1, 1999 to coincide with implementation of the OPPTS. They based their argument for delaying implementation of the ASC changes both on the need for more time for cross-analysis of the ASC proposed rule with the hospital outpatient prospective payment system (OPPS) proposed rule and the overlap and interrelationship between the two payment systems. This second extension notice also explained that there would be no inflationary update of the ASC rates on October 1, 1998 because reducing the fiscal year CPI-U factor of 2.1 percent by 2.0 percent would result in a change of less than \$1 for each payment group.

A third notice, which extended the comment period to January 8, 1999, was published in the **Federal Register** on November 15, 1998. This extension was necessary because the OPPTS proposed rule comment period was being extended and Medicare payments to ASCs were closely linked to the way Medicare proposed to pay hospitals under the OPPTS. A fourth extension notice was published in the **Federal Register** on January 12, 1999 (64 FR

1785). The reason given was the same as the prior extension notice, that is, because the comment period for the OPPTS rule was being extended for further examination and because the two proposed payment systems were closely related. The new closing date of March 9, 1999 would run concurrently with the OPPTS extension. On March 2, 1999, a fifth extension notice with the same rationale as the fourth notice was published in the **Federal Register** (64 FR 12278) and extended the comment period for an additional 60 days.

The sixth and final extension was published in the **Federal Register** July 6, 1999 (64 FR 36321). On June 30, 1999 we published a correction notice (64 FR 35258) in the **Federal Register** that corrected a number of technical and typographical errors contained in the September 8, 1998 OPPTS proposed rule. To provide commenters adequate time to analyze the potential impact of the corrections to the OPPTS proposed rule on ASC payments and because of the link between Medicare ASC payments and hospital outpatient payments, we found it appropriate to extend the comment period for the ASC proposed rule to July 30, 1999.

II. Provisions of the Proposed Regulations

In the June 12, 1998, proposed rule, we proposed the following:

- Clarification of the definition of ASC.
- Revision of the basic requirements in § 416.3 and § 416.4.
- Additions to and deletions from the ASC list.
- Revision of the criteria for determining surgical procedures payable in an ASC in § 416.65 and elimination of numeric thresholds.
- Establishment of an ASC Advisory Group.
- Replacement of eight ASC payment groups with ambulatory payment classification (APC) groups that are clinically homogeneous and consist of procedures with similar resource inputs, modeled on the APC groups proposed for the OPPTS.
- Redefinition of the ASC ratesetting methodology.
- Rebased payment rates to reflect a survey of ASC costs that was conducted in 1994.

A combination of circumstances has resulted in our delaying publication of a final rule to implement the changes proposed in the June 12, 1998 ASC proposed rule. First, as discussed above, we extended the public comment period to July 30, 1999 in response to requests from the industry to allow adequate opportunity for comparison of the