

TABLE 4.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET INCREASE FOR FY 2004 PRIOR TO WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline types	Final per-visit amounts per 60-day episode for FY 2003 for LUPAs	Multiply by applicable home health market basket	Final per-visit payment amount per discipline for FY 2004 for LUPAs
Home Health Aide	\$42.68	×1.033	\$44.09
Medical Social Services	151.11	×1.033	156.10
Occupational Therapy	103.77	×1.033	107.19
Physical Therapy	103.07	×1.033	106.47
Skilled Nursing	94.27	×1.033	97.38
Speech-Language Pathology	112.00	×1.033	115.70

C. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under HH PPS to account for area wage differences. We apply the appropriate wage index value to the labor portion of the HH PPS rates based on the geographic area in which the beneficiary received home health services. We determine each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB).

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Again, as discussed in the July 3, 2000 final rule, we used the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication of this notice to adjust the labor portion of the HH PPS rates based on the geographic area in which the beneficiary receives the home health services. We believe the use of the most recent available pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute. (See addenda A and B of this notice with comment period, respectively, for the rural and urban hospital wage indexes. Furthermore, we have added an addendum C that shows a side-by-side comparison of the FY 2002 pre-floor and pre-reclassified hospital wage index and FY 2003 pre-floor and pre-reclassified hospital wage index for the FY 2004 HH PPS update

notice. We believe that addendum C provides a clear illustration of changes in the wage index from FY 2002 and FY 2003.)

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of finding and its reasons in the notice issued.

We believe it is unnecessary to undertake proposed notice and comment rulemaking as the statute requires annual updates to the HH PPS rates, the methodologies used to update the rate have been previously subject to public comment, and this notice reflects the application of previously established methodologies. This required annual update for the FY 2004 PPS rates is dictated by statute and does not require an exercise of discretion. Therefore, for good cause, we waive prior notice and comment procedures. As indicated previously, we are, however, providing a 60-day comment period for public comment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents

published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of the preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). The update set forth in this notice with comment period applies to Medicare payments under HH PPS in FY 2004. Accordingly, the following analysis describes the impact in FY 2004 only. We estimate that there will be an additional \$340 million in FY 2004 expenditures attributable to the FY 2004 market basket increase of 3.3 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and