

average physician expense weights across all physician specialties and are intended to reflect the average costs across all services and specialties in a geographic area and not to reflect exactly the costs of each individual practitioner.

Comment: One commenter stated that there should be no geographic payment differentials because these payment differentials operate as a disincentive for practitioners to practice medicine in rural areas.

Response: Section 1848(e)(1)(A) of the Act requires that payments vary among areas as resources costs vary as reflected by the GPCIs. It should be recognized that the current methodology associated with the calculation of GPCIs partially benefits practitioners in rural areas. This is because the law requires that only *one-quarter* of area cost differences in physician work, the largest of the three fee schedule components, be recognized. Thus, about 40 percent of fee schedule payments are by statute not adjusted for area cost differences. When combined with the index of 1.000 for medical equipment, supplies, and miscellaneous (which represents about 13 percent of total physician resource costs) this means that there is a national fee schedule for about 53 percent of the average physician payment. That is, only about 47 percent of overall physician payments are adjusted for area resource cost differences. In addition, 34 states have a single statewide GPCI wherein all physicians, whether urban or rural, are paid the same. All of these factors shift payments from higher cost, usually urban, areas to lower cost, usually rural, areas.

Comment: One commenter felt that we should not use projected 2003 premium data and instead should actually collect 2003 premium data.

Response: Currently, 2003 premium data is not available. This is why we will utilize projected 2003 premium data in this update. We plan to utilize more current premium data as it becomes available.

Comment: Although several commenters expressed their support for the use of more current malpractice premium data, a few commenters had concerns about the use of 2001 through projected 2003 premium data and felt that we should use only projected 2004 premium data in place of the three year average.

Response: Since the malpractice index has proven to be the most volatile of the indices in past updates, with significant changes from year-to-year, we will not base the malpractice GPCI upon just one year of projected data. In order to protect against aberrant

premiums for any given year, we will utilize a three-year average. We will use 2001 through projected 2003 premium data for the three-year average.

The current methodology projects 2003 malpractice premiums based upon actual malpractice premiums for 1999 through 2002. Since we will continue to collect updated malpractice premium data, we do not think it is appropriate to project through 2004 absent actual 2003 malpractice premium data.

Comment: One commenter suggested that due to the volatility associated with malpractice insurance premium data, we should collect premium data and re-scale the Malpractice GPCI annually.

Response: We agree that, because malpractice insurance premiums are volatile, the Malpractice GPCI is also the most volatile of the three indices. We also agree with the commenter's suggestion regarding annual collection of malpractice premium data. We plan to undertake this collection for 2003 premium data in early 2004. If premium data suggest a re-scaling is warranted, we may revise the GPCIs more frequently than every three years.

Comment: Several commenters requested that we make available to the public the malpractice premium data that was utilized in the calculation of the revised malpractice GPCIs.

Response: Since some of the data upon which the GPCIs were constructed is based upon the reporting of individual malpractice insurance companies, there are some confidentiality issues associated with making the malpractice premium data public. We will attempt to make available any information that is appropriate on our Web site at <http://www.cms.hhs.gov>.

Comment: The American Medical Association's Relative Value Update Committee (RUC) has requested that CMS work with the RUC's Professional Liability Insurance Workgroup to explore the utilization of premium data that might be collected by the RUC.

Response: We agree with the RUC request and look forward to working with the RUC to obtain more current professional liability premium data.

4. Interim 2004 Malpractice GPCIs

Acquiring data on malpractice insurance rates and using that data to adjust Medicare payments for future malpractice insurance prices is a difficult task. Malpractice insurance rates are quite volatile due to a variety of factors. Some of these factors are changes in State insurance laws, business decisions of malpractice insurance carriers, and changes in how medicine is practiced.

The volatility of malpractice premium data was quite evident in the data we collected in conducting our review of malpractice GPCIs. Based on these data and the comments received on the August 15, 2003 proposed rule, we have modified some of our GPCI calculations and assumptions.

We are very concerned about implementing sharp changes in malpractice GPCIs for 2004, which directly impact physician fee schedule payment amounts. At the same time, we recognize the importance of updating malpractice GPCIs to ensure local differences in physician costs are included in payment amounts. To be sensitive to both of these considerations, we decided to apply a modulating factor of .5 to the changes in the malpractice GPCIs. In other words, as part of our review and analysis of the malpractice GPCIs, we reduced the difference between the new and previous malpractice GPCIs by 50 percent.

As directed by the statute, we will implement $\frac{1}{2}$ of this change in the first year (CY 2004) and $\frac{1}{2}$ of this change in the second year (CY 2005). During this two-year phase-in, we will continue to monitor local malpractice markets, work with the State Departments of Insurance, and collaborate with the RUC to obtain the most current and best malpractice premium data available. As better data are obtained, we will review, propose changes, and revise the malpractice GPCIs as appropriate. The transitional 2004 and full 2005 GPCIs can be found at Addendum D and Addendum E, respectively. These malpractice GPCI revisions necessitate a budget neutrality adjustment, as required by law. Therefore, we adjusted the 2004 through 2006 malpractice GPCIs by 1.0021.

5. Payment Localities

In the August 15, 2003 proposed rule we requested comments on the composition of the current 89 Medicare physician payment localities to which the GPCIs are applied.

Comment: We received numerous comments from professional medical associations, beneficiaries, and practitioners requesting that the specific counties in which they practice medicine or receive medical care be removed from their current locality assignment.

Response: We will continue to examine alternatives for reconfiguring the current locality structure. We expect to further consider this issue as part of future rulemaking.