

18434) that addressed the provisions of the PPS for hospital outpatient services scheduled to be effective for services furnished on or after July 1, 2000. Under this system, Medicare payment for hospital outpatient services included in the PPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of ambulatory payment classifications (APCs). The April 7, 2000 final rule with comment period also established requirements for provider departments and provider-based entities and prohibited Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital unless the services are furnished under arrangement. In addition, this rule extended reductions in payment for costs of hospital outpatient services as required by the BBA and amended by the BBRA. Medicare regulations governing the hospital OPSS are set forth at 42 CFR part 419. Subsequently, we announced a delay in implementation of the OPSS from July 1, 2000 to August 1, 2000.

- On August 3, 2000, we published an interim final rule with comment period (65 FR 47670) that modified criteria that we use to determine which medical devices are eligible for transitional pass-through payments. The rule also corrected and clarified certain provider-based provisions included in the April 7, 2000 rule.

- On November 13, 2000, we published an interim final rule with comment period (65 FR 67798) to provide the annual update to the amounts and factors for OPSS payment rates effective for services furnished on or after January 1, 2001. We implemented the 2001 OPSS on January 1, 2001. We also responded to public comments on those portions of the April 7, 2000 final rule that implemented related provisions of the BBRA and public comments on the August 3, 2000 rule.

- On November 2, 2001, we published a final rule (66 FR 55857) that announced the Medicare OPSS conversion factor for calendar year (CY) 2002. It also described the Secretary's estimate of the total amount of the transitional pass-through payments for CY 2002 and the implementation of a uniform reduction in each of the pass-through payments for that year.

- On November 2, 2001, we also published an interim final rule with comment period (66 FR 55850) that set forth the criteria the Secretary will use to establish new categories of medical devices eligible for transitional pass-

through payments under Medicare's OPSS.

- On November 30, 2001, we published a final rule (66 FR 59856) that revised the Medicare OPSS to implement applicable statutory requirements, including relevant provisions of BIPA, and changes resulting from continuing experience with this system. In addition, it described the CY 2002 payment rates for Medicare hospital outpatient services paid under the PPS. This final rule also announced a uniform reduction of 68.9 percent to be applied to each of the transitional pass-through payments for certain categories of medical devices and drugs and biologicals.

- On December 31, 2001, we published a final rule (66 FR 67494) that delayed, until no later than April 1, 2002, the effective date of CY 2002 payment rates and the uniform reduction of transitional pass-through payments that were announced in the November 30, 2001 final rule. In addition, this final rule indefinitely delayed certain related regulatory provisions.

- On March 1, 2002, we published a final rule (67 FR 9556) that corrected technical errors that affected the amounts and factors used to determine the payment rates for services paid under the Medicare OPSS and corrected the uniform reduction to be applied to transitional pass-through payments for CY 2002 as published in the November 30, 2001 final rule. These corrections and the regulatory provisions that had been delayed became effective on April 1, 2002.

- On November 1, 2002, we published a final rule (67 FR 66718) that revised the Medicare OPSS to update the payment weights and conversion factor for services payable under the 2003 OPSS on the basis of data from claims for services furnished from April 1, 2001 through March 31, 2002. The rule also removed from pass-through status most drugs and devices that had been paid under pass-through provisions in 2002 as required by the applicable provisions of law governing the duration of pass-through payment.

- On August 12, 2003, we published a proposed rule (68 FR 47966) that proposed the Medicare OPSS conversion factor for CY 2004. In addition, it described proposed changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system.

### *C. Summary of Changes in the August 12, 2003 Proposed Rule*

On August 12, 2003, we published a proposed rule (68 FR 47966) that proposed changes to the Medicare hospital OPSS and CY 2004 payment rates including proposed changes used to determine these payment rates. The following is a summary of the major changes that we proposed and the issues we addressed in the August 12, 2003 proposed rule.

#### **1. Changes Required by Statute**

We proposed the following changes to implement statutory requirements:

- Add APCs, delete APCs, and modify the composition of some existing APCs.
- Recalibrate the relative payment weights of the APCs.
- Update the conversion factor and the wage index.
- Revise the APC payment amounts to reflect the APC reclassifications, the recalibration of payment weights, and the other required updates and adjustments.
- Cease transitional pass-through payments for drugs and biologicals and devices that will have been paid under the transitional pass-through methodology for at least 2 years by January 1, 2004.
- Cease transitional outpatient payments (TOPS payments) for all hospitals paid under OPSS except for cancer hospitals and children's hospitals.

#### **2. Additional Changes to OPSS**

We proposed the following additional changes to the OPSS:

- Adjust payment to moderate the effects of decreased median costs for non-pass-through drugs, biologicals, and radiopharmaceuticals.
- Implement a new method for paying for drug administration.
- Create new evaluation and management service codes for outpatient clinic and emergency department encounters.
- Change status indicators for Healthcare Common Procedure Coding System (HCPCS) codes.
- List midyear and proposed HCPCS codes that are paid under OPSS.
- Allocate a portion of the outlier percentage target amount to community mental health centers (CMHCs) and create a separate threshold for outlier payments for partial hospitalization services.
- Create methodology and payment rates for separately payable drugs and radiopharmaceuticals for 2004.
- Make several changes in our current payment policy with regard to payment