

As we stated in the August 12, 2003 proposed rule, as a general rule, we would seek to lower the coinsurance rate for the services in an APC from the prior year. This principle is consistent with section 1833(t)(8)(C)(ii) of the Act, which accelerates the reduction in the national unadjusted coinsurance rate so that beneficiary liability will eventually equal 20 percent of the OPPS payment rate for all OPPS services and with section 1833(t)(3)(B), which indicates the congressional goal of achieving 20 percent coinsurance when fully phased in and gives the Secretary the authority to set rules for determining copayment amounts to new services. However, in no event is the proposed 2004 unadjusted coinsurance amount for an APC group lower than 20 percent or greater than 50 percent of the payment rate.

We proposed to determine copayment amounts in 2004 and subsequent years in accordance with the following rules.

1. When an APC group consists solely of HCPCS codes that were not paid under the OPPS the prior year because they were packaged or excluded or are new codes, the unadjusted copayment amount would be 20 percent of the APC payment rate.

2. If a new APC that did not exist during the prior year is created and consists of HCPCS codes previously assigned to other APCs, the copayment amount is calculated as the product of the APC payment rate and the lowest coinsurance percentage of the codes comprising the new APC.

3. If no codes are added to or removed from an APC and, after recalibration of its relative payment weight, the new payment rate is equal to or *greater than* the prior year's rate, the copayment amount remains constant (unless the resulting coinsurance percentage is less than 20 percent).

4. If no codes are added to or removed from an APC and, after recalibration of its relative payment weight, the new payment rate is *less than* the prior year's rate, the copayment amount is calculated as the product of the new payment rate and the prior year's coinsurance percentage.

5. If HCPCS codes are added to or deleted from an APC, and, after recalibrating its relative payment weight, holding its unadjusted copayment amount constant results in a decrease in the coinsurance percentage for the reconfigured APC, the copayment amount would not change (unless retaining the copayment amount would result in a coinsurance rate less than 20 percent).

6. If HCPCS codes are added to an APC, and, after recalibrating its relative

payment weight, holding its unadjusted copayment amount constant results in an increase in the coinsurance percentage for the reconfigured APC, the copayment amount would be calculated as the product of the payment rate of the reconfigured APC and the lowest coinsurance percentage of the codes being added to the reconfigured APC.

We stated in the proposed rule that this methodology would, in general, reduce the beneficiary coinsurance rate and copayment amount for APCs for which the payment rate changes as the result of the reconfiguration of APCs and/or the recalibration of relative payment weights. We received no comments from the public on our proposal for the calculation of beneficiary copayment amounts.

The unadjusted copayment amounts for services payable under the OPPS effective January 1, 2004 are shown in Addendum A and Addendum B.

IX. Conversion Factor Update for CY 2004

Section 1833(t)(3)(C)(ii) of the Act requires us to update the conversion factor used to determine payment rates under the OPPS on an annual basis.

Section 1833(t)(3)(C)(iv) of the Act provides that for 2004, the update is equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act.

The forecast of the hospital market basket increase for FY 2004 published in the inpatient PPS proposed rule on May 19, 2003 was 3.5 percent. To set the proposed OPPS conversion factor for 2004, we increased the 2003 conversion factor of \$52.151 (the figure from the November 1, 2002 final rule (67 FR 66788) by 3.5 percent.

In accordance with section 1833(t)(9)(B) of the Act, we further adjusted the proposed conversion factor for 2004 to ensure that the revisions we proposed to update by means of the wage index are made on a budget-neutral basis. We calculated a budget neutrality factor of 1.003 for wage index changes by comparing total payments from our simulation model using the proposed FY 2004 hospital inpatient PPS wage index values to those payments using the current (FY 2003) wage index values. In addition, for CY 2004, allowed pass-through payments have decreased to 2 percent of total OPPS payments, down from 2.3 percent in CY 2003. The 0.3 percent was also used to adjust the conversion factor.

The proposed market basket increase factor of 3.5 percent for 2004, the required wage index budget neutrality adjustment of approximately 1.003, and

the 0.3 percent adjustment to the pass-through estimate, resulted in a proposed conversion factor for 2004 of \$54.289.

For purposes of updating the CY 2003 conversion factor to determine a final conversion factor for CY 2004 we applied an update factor based on the final hospital inpatient market basket increase for FY 2004 of 3.4 percent, as published in the final rule for IPPS on August 1, 2003. We further adjusted the conversion factor by applying a budget neutrality factor of 1.001 for wage index changes based on final FY 2004 hospital inpatient PPS wage index values as published in a correction notice to the IPPS final rule on October 6, 2003. In addition, for CY 2004, estimated pass-through payments have decreased to 1.3 percent of total OPPS payments, down from 2.3 percent in CY 2003. The conversion factor was further adjusted by the difference in estimated pass-through payments of 1.0 percent.

The increase factor of 3.4 percent for 2004, the required wage index budget neutrality adjustment of slightly more than 1.001 and the 1.0 percent adjustment to the pass-through estimate, result in a final conversion factor for 2004 of \$54.561.

We received several comments concerning the conversion factor update for 2004, which are summarized below.

Comment: Several commenters stated that the OPPS has been underfunded since its inception. One commenter stated that the OPPS conversion factor has increased by less than the full market basket increase and urged that we work with Congress to enact an annual outpatient update for 2005 that corrects for the funding gap. Other commenters, noting the preliminary estimate of pass-through spending in our proposed rule of August 12 of 1.0 percent of total OPPS payments, strongly urged us to return the remaining 1.0 percent to the conversion factor to help fund all other APCs.

Response: As described elsewhere in this final rule, we have completed our estimate of pass-through spending for 2004. By statute, we are authorized to spend only 2.0 percent of total estimated OPPS payments on pass-through spending for 2004. According to the best information available to us at this time, we estimate the total pass-through spending to be 1.3 percent of total OPPS spending for 2004. For 2003, we estimated the total pass-through spending to be 2.3 percent of total. Thus, we have returned the additional 1.0 percent to the conversion factor.