

### *C. Ambulance Inflation Factor (AIF) for CY 2004*

Section 1834(l)(3)(B) of the Act provides the basis for updating payment amounts for ambulance services. Our regulations at § 414.620(f) provide that the ambulance fee schedule must be updated by the AIF annually, based on the percentage increase in the consumer price index (CPI) for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year (§ 414.610(f)). The regulations also provide that notice of the AIF be published in the **Federal Register** without opportunity for prior notice and comment. We will follow applicable rulemaking procedures in publishing revisions to the fee schedule for ambulance services that result from any factors other than the inflation factor. In this preamble, we set forth the ambulance inflation factor applicable for services furnished in CY 2004.

## II. Provisions of the Final Rule

### *A. Transitional Assistance for Rural Mileage 18 Through 50*

Section 414.610(c)(5) is amended to clarify that this benefit is no longer payable for services furnished after December 31, 2003.

### *B. Ambulance Inflation Factor for 2004*

Section 1834(l)(3)(B) of the Act, specified in § 414.620(f), provides for an update in payments for CY 2004 that is equal to the percentage increase in the CPI for all urban consumers (CPI-U), for the 12-month period ending with June of the previous year (that is, June 2003). For CY 2004, that percentage is 2.1 percent.

During the transition period (described in § 414.615, Transition to the ambulance fee schedule), the AIF is applied to both the fee schedule portion of the blended payment amount and to the reasonable charge/cost portion of the blended payment amount separately for each ambulance provider/supplier. Then, these two amounts are added together to determine the total payment amount for each provider/supplier.

## III. Technical Corrections

We are also making the following technical corrections to § 414.605, Definitions.

- In the definition of “*Advanced life support (ALS) intervention*,” we are clarifying that an ALS intervention must be furnished by ALS personnel.

- A comma was inadvertently omitted in the definition of “*Advanced life support, Level 2 (ALS2)*.” That comma is now inserted after the phrase “or by continuous infusion” and before

the phrase “excluding crystalloid.”

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- There was an inadvertent misuse of the term “supplier” in the definition of the term “*emergency response*.” The correct term is “entity.” Providers, as well as suppliers, may furnish an emergency response. We did not intend to exclude providers from receiving payment for this service.

- In the definition of “*Rural area*”, we are clarifying that only New England County Metropolitan Areas (NECMAs) (and not MSAs) apply in New England. (NECMAs exist only in New England. All other areas have MSAs.) Also, the term “NECMA” was inadvertently omitted from the discussion of the Goldsmith modification. The phrase “or NECMA” is now inserted after the term “MSA” and before the phrase “that is identified as rural by the Goldsmith modification.” This clarifies that a Goldsmith modification can apply to a NECMA as well as an MSA.

- Section 414.610(c)(3) is revised to conform the first two sentences to reflect the fact that the process for determining payment for mileage is the same for ground and air miles.

## IV. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because the statute specifies the method of computation of annual updates, and we have no discretion in this matter. Further, this rule does not change substantive policy, but merely applies the statutorily-specified update method. Therefore, under 5 U.S.C. 553(b)(B), for good cause, we waive notice and comment procedures.

We also find it unnecessary to undertake notice and comment rulemaking as to the technical changes because they merely provide technical corrections to the regulations and do not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

## 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.

## VI. Regulatory Impact Statement

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 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). This final rule is not considered a major rule because it has an effect on the Medicare program of less than \$100 million in any 1 year. Application of an AIF of 2.1 percent will result in an additional total program expenditure of approximately \$65 million.

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 government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. For purposes of the RFA, all ambulance providers/suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

HHS considers that a substantial number of entities are affected if the rule impacts more than 5 percent of the total number of small entities as it does in this rule. Although this rule impacts every ambulance provider and supplier because all ambulance payment rates are increased by the 2.1 percent ambulance inflation factor, we do not believe that this has a significant impact. We estimate the combined impact of this rule would be an approximate 2 percent increase in Medicare revenues, which, therefore, would be a somewhat less than 2 percent increase in total revenues (that is, Medicare plus non-Medicare revenues). This estimated impact does not meet the threshold established by