

Circuit. It also provides that challenges to any locally or regionally applicable rules may be filed in the United States Court of Appeals for the appropriate circuit. However, if EPA determines that a locally or regionally applicable rule is of nationwide scope and effect, then a challenge must be filed in the United States Court of Appeals for the District of Columbia Circuit.

The phase 1 rule is a nationally applicable rule. It establishes requirements for the 8-hour ozone NAAQS and those requirements apply in a consistent manner across the nation. The rule does not establish any requirements or obligations that apply only on a local or regional basis. Thus, under section 307(b), challenges to the phase 1 rule must be filed in the United States Court of Appeals for the District of Columbia Circuit. By the reference in section VI.L. to challenges being filed in the "appropriate circuit," EPA did not intend to suggest that a Court other than the United States Court of Appeals for the District of Columbia Circuit could be appropriate or that phase 1 rule is locally or regionally applicable as that phrase is used in section 307(b). However, because EPA's statement in section VI.L. could be misconstrued, we are issuing this correction to clarify the Agency's intention by replacing the clause "appropriate circuit" with "United States Court of Appeals for the District of Columbia Circuit."

The following is the corrected language:

Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501-7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7401.

Dated: June 21, 2004.

Robert Brenner,

Acting Assistant Administrator.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 414

[CMS-1372-CN2]

RIN 0938-AM97

Medicare Program; Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004: Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the *Federal Register* on January 7, 2004 entitled "Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004."

DATES: Effective Date: This correction is effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Milstead (410) 786-3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03-32323 of January 7, 2004 (69 FR 1084), there were a number of technical errors that we are identifying and correcting in section II—Correction of Errors. Additionally, there are various revisions to Addenda B and C. (The provisions in this correction notice are effective as if they were included in the document published January 7, 2004.)

Discussion of Addenda B and C

1. There was an inadvertent omission of two supplies (Polaroid film and gonisol) from the Practice Expense Advisory Committee (PEAC) recommendations for CPT codes 76511, 76511-TC, 76512, 76512-TC, 76513, 76513-TC, 76516, 76516-TC, 76519, 76519-TC, 76529 and 76529-TC which impacts the practice expense RVUs for these codes on page 1205 of Addendum B. In addition, the supply inputs in the CPEP database for CPT code 94240 contained incorrect quantities for two supplies (oxygen and helium), resulting in incorrect practice expense RVUs on page 1229 of Addendum B for this code and for CPT

code 94240-TC. The practice expense RVUs for CPT 95144 on page 1230 were also incorrect as they reflected the wrong antigen and price. The corrected RVUs are shown in section II.2.

2. In Addendum B, we assigned incorrect status indicators on page 1154 for CPT code 36416 and on page 1165 for CPT code 47133. These corrections are reflected in section II.2.

3. In Addendum B, we assigned incorrect practice expense RVUs to CPT codes 61863 and 61867 on page 1179, and to CPT codes 88358, 88358-26 and 88358-TC on page 1218. The correct RVUs are reflected in section II.2.

4. In Addendum B, on page 1241, an incorrect short descriptor was referenced for HCPCS code G0321, and the RVUs for G0321 and G0322 were transposed. The correct short descriptor and RVUs are shown in section II.2.

5. We inadvertently omitted the following CPT codes from Addendum B: page 1218 for CPT codes 89220, 89230, and 89240. These corrections are reflected in section II.3.

6. On pages 1146 and 1243 in Addenda B and C, respectively, we assigned the incorrect work RVUs to CPT 31629. We also failed to assign practice expense RVUs in the non-facility setting for this code. The corrected RVUs are shown in section II.4.

7. On page 1215 of Addenda B, the practice expense RVUs for CPT codes 78804 and 78804-TC are revised to reflect the appropriate crosswalk. The correction can be found in section II.4.

II. Correction of Errors

■ In FR Doc. 03-32323 of January 7, 2004 (69 FR 1084), make the following corrections—

■ 1. On page 1094, column one, second sentence, revise as follows to correct the specialty code referenced for urology: "Based on the 2002 data, we found that the specialties of gynecology/obstetrics (specialty code 98), rheumatology (specialty code 66), and urology (specialty code 34) received more than 40 percent of total Part B revenues from drugs."

■ 2. In the Table of Addendum B, the following CPT codes are corrected to read as follows:

CPT ¹ HCPCS	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
36416		B	Capillary blood draw	0.00	0.00	0.00	0.00	0.00	0.00	XXX
47133		X	Removal of donor liver	0.00	0.00	0.00	0.00	0.00	0.00	XXX
61863		A	Implant neuroelectrode	18.97	NA	11.80	4.79	NA	35.56	XXX
61867		A	Implant neuroelectrode	31.29	NA	18.08	4.79	NA	54.16	90
76511	TC	A	Echo exam of eye	0.94	1.83	NA	0.09	2.86	NA	XXX
76512		A	Echo exam of eye	0.00	1.43	NA	0.07	1.50	NA	XXX
76512		A	Echo exam of eye	0.66	1.75	NA	0.11	2.52	NA	XXX
76512	TC	A	Echo exam of eye	0.00	1.45	NA	0.10	1.55	NA	XXX
76513		A	Echo exam of eye, water bath	0.66	1.84	NA	0.11	2.61	NA	XXX
76513	TC	A	Echo exam of eye, water bath	0.00	1.54	NA	0.10	1.64	NA	XXX
76516		A	Echo exam of eye	0.54	1.45	NA	0.08	2.07	NA	XXX
76516	TC	A	Echo exam of eye	0.00	1.20	NA	0.07	1.27	NA	XXX
76519		A	Echo exam of eye	0.54	1.54	NA	0.08	2.16	NA	XXX
76519	TC	A	Echo exam of eye	0.00	1.29	NA	0.07	1.36	NA	XXX
76529		A	Echo exam of eye	0.57	1.40	NA	0.10	2.07	NA	XXX
76529	TC	A	Echo exam of eye	0.00	1.15	NA	0.08	1.23	NA	XXX
88358		A	Analysis, tumor	0.95	0.56	NA	0.19	1.70	NA	XXX
88358	26	A	Analysis, tumor	0.95	0.42	NA	0.12	1.49	NA	XXX
88358	TC	A	Analysis, tumor	0.00	0.14	NA	0.07	0.21	NA	XXX
94240		A	Residual lung capacity	0.26	0.70	NA	0.06	1.02	NA	XXX
94240	TC	A	Residual lung capacity	0.00	0.62	NA	0.05	0.67	NA	XXX
95144		A	Antigen therapy services	0.06	0.19	0.02	0.01	0.26	0.09	000
G0321		A	ESRD related svcs home mo 2-11y	8.11	3.92	3.92	0.29	12.32	12.32	XXX
G0322		A	ESRD relate svcs home mo 2-19	6.90	3.67	3.67	0.23	10.80	10.80	XXX

¹ All CPT codes copyright 2003 American Medical Association.

■ 3. In the Table of Addendum B, the following CPT codes are added to read as follows:

CPT ¹ HCPCS2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
89220		A	Sputum specimen collection	0.00	0.40	NA	0.02	0.42	NA	XXX
89230		A	Collect sweat for test	0.00	0.44	NA	0.02	0.46	NA	XXX
89240		C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX

¹ All CPT codes copyright 2003 American Medical Association.

■ 4. In the Table of Addenda B and C, the following CPT codes are corrected to read as follows:

CPT ¹ HCPCS2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
31629		A	Bronchoscopy/needle bx, each	4.09	12.79	1.45	0.16	17.04	5.70	000
78804		A	Tumor imaging, whole body	1.07	11.47	NA	0.34	12.88	NA	XXX
78804	TC	A	Tumor imaging, whole body	0.00	11.10	NA	0.30	11.40	NA	XXX

¹ All CPT codes copyright 2003 American Medical Association.

III. 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 take effect. 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 incorporate a statement of the finding and the reasons for it into the notice issued.

In this case, we believe that it is unnecessary to subject the corrections identified above to public comment. These errors were the result of inadvertent omissions and typographical errors in Addenda B and C. Our corrections of the pricing errors and addition of pricing information in the addenda do not substantively change any policy nor affect the established payment methodology. For this reason, we find it unnecessary to provide the opportunity for comment on

the technical corrections made in this notice. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 2, 2004.

Ann C. Agnew,
Executive Secretary to the Department.
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