(v) Maintaining budget neutrality for fiscal year 1985. (1) For fiscal year 1985, CMS will adjust each of the reduced standardized amounts determined under paragraph (c) of this section as required for fiscal year 1985 to ensure that the estimated amount of aggregate payments made, excluding the hospital-specific portion (that is, the total of the Federal portion of transition payments, plus any adjustments and special treatment of certain classes of hospitals for fiscal year 1985) is not greater or less than 50 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the law as in effect on April 19, 1983.

(2) The aggregate payments considered under this paragraph exclude payments for per case review by a utilization and quality control quality improvement organization, as allowed under section 1866(a)(1)(F) of the Act.

(w) Computing Federal rates for inpatient operating costs for hospitals located in large urban and other areas. For each discharge classified within a DRG, CMS establishes for the fiscal year a national prospective payment rate and a regional prospective payment rate for inpatient operating costs, for each region, as follows:

(1) For hospitals located in a large urban area in the United States or that region respectively, the rate equals the product of—
(i) The adjusted average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in a large urban area in the United States or in that region; and
(ii) The weighting factor determined under §412.60(b) for that DRG.

(2) For hospitals located in an other area in the United States or that region respectively, the rate equals the product of—
(i) The adjusted average standardized amount (computed under paragraph (c) of this section) for the fiscal year for hospitals located in a large urban area in the United States or in that region; and
(ii) The weighting factor determined under §412.60(b) for that DRG.

(x) Adjusting for different area wage levels. (1) CMS adjusts the proportion (as estimated by CMS from time to time) of Federal rates for inpatient operating costs computed under paragraph (j) of this section that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by CMS based on survey data) reflecting the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (b) of this section) of the hospital compared to the national average level of hospital wages and wage-related costs. The wage index is updated annually.

(2)(i) CMS makes a midyear correction to the wage index for an area only if a hospital can show that—
(A) The intermediary or CMS made an error in tabulating its data; and
(B) The hospital could not have known about the error, or did not have the opportunity to correct the error, before the beginning of the Federal fiscal year.

(ii) A midyear correction to the wage index is effective prospectively from the date the change is made to the wage index.

(3) If a judicial decision reverses a CMS denial of a hospital’s wage data revision request, CMS pays the hospital by applying a revised wage index that reflects the revised wage data as if CMS’s decision had been favorable rather than unfavorable.

[50 FR 12741, Mar. 29, 1985]

EDITORIAL NOTE: For Federal Register citations affecting §412.63, see the List of CFR Sections Affected, which appears in the finding Aids section of the printed volume and at www.fdsys.gov.

§412.64 Federal rates for inpatient operating costs for Federal fiscal year 2005 and subsequent fiscal years.

(a) General rule. CMS determines a national adjusted prospective payment rate for inpatient operating costs for each inpatient hospital discharge in Federal fiscal year 2005 and subsequent fiscal years involving inpatient hospital services of a hospital in the United States subject to the prospective payment system for which payment may be made under Medicare Part A.
(b) Geographic classifications. (1) For purposes of this section, the following definitions apply:

(i) The term region means one of the 9 metropolitan divisions comprising the 50 States and the District of Columbia, established by the Executive Office of Management and Budget for statistical and reporting purposes.

(ii) The term urban area means—

(A) A Metropolitan Statistical Area or a Metropolitan division (in the case where a Metropolitan Statistical Area is divided into Metropolitan Divisions), as defined by the Executive Office of Management and Budget; or

(B) For discharges occurring on or after October 1, 1983, and before October 1, 2007, the following New England counties are deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21, 42 U.S.C. 1395ww (note): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(C) The term rural area means any area outside an urban area.

(D) The phrase hospital reclassified as rural means a hospital located in a county that, in FY 2004, was part of an MSA, but was redesignated as rural after September 30, 2004, as a result of the most recent census data and implementation of the new MSA definitions announced by OMB on June 6, 2003.

(2) For hospitals within an MSA that crosses census division boundaries, the MSA is deemed to belong to the census division in which most of the hospitals within the MSA are located.

(3)(i) For discharges occurring on or after October 1, 2004, a hospital located in a rural county adjacent to one or more urban areas is deemed to be located in an urban area and receives the Federal payment amount for the urban area to which the greater number of workers in the county commute if the rural county would otherwise be considered part of an urban area, under the standards for designating MSAs if the commuting rates used in determining outlying counties were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or central counties of all adjacent MSAs. These EOMB standards are set forth in the notice of final revised standards for classification of MSAs published in the Federal Register on December 27, 2000 (65 FR 62228), announced by EOMB on June 6, 2003, and available from CMS, 7500 Security Boulevard, Baltimore, Maryland 21244.

(ii) For discharges occurring on or after October 1, 2007, hospitals in the following New England counties, if not already located in an urban area, are deemed to be located in urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21, 42 U.S.C. 1395ww (note): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(4) For purposes of this section, any change in an MSA designation is recognized on October 1 following the effective date of the change. Such a change in MSA designation may occur as a result of redesignation of an MSA by the Executive Office of Management and Budget.

(5) For hospitals that consist of two or more separately located inpatient hospital facilities, the national adjusted prospective payment rate is based on the geographic location of the hospital facility at which the discharge occurred.

(c) Computing the standardized amount. CMS computes an average standardized amount that is applicable to all hospitals located in all areas, updated by the applicable percentage increase specified in paragraph (d) of this section. CMS standardizes the average standardized amount by excluding an estimate of indirect medical education payments.

(d) Applicable percentage change for fiscal year 2005 and for subsequent fiscal years. (1) Subject to the provisions of paragraph (d)(2) of this section, the applicable percentage change for updating the standardized amount is—

(i) For fiscal year 2005 through fiscal year 2009, the percentage increase in the market basket index for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(ii) For fiscal year 2010, for discharges—
(A) On or after October 1, 2009 and before April 1, 2010, the percentage increase in the market basket index for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas; and
(B) On or after April 1, 2010 and before October 1, 2010, the percentage increase in the market basket index minus 0.25 percentage points for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(iii) For fiscal year 2011, the percentage increase in the market basket index minus 0.25 percentage points for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(iv) For fiscal years 2012 and 2013, the percentage increase in the market basket index less a multifactor productivity adjustment (as determined by CMS) and less 0.1 percentage point for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(v) For fiscal year 2014, the percentage increase in the market basket index less a multifactor productivity adjustment (as determined by CMS) and less 0.3 percentage point for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.

(2)(i) In the case of a “subsection (d) hospital,” as defined under section 1886(d)(1)(B) of the Act, that is not a meaningful electronic health record (EHR) user as defined in part 495 of this chapter for the applicable EHR reporting period and does not receive an exception, three-fourths of the applicable percentage change specified in paragraph (d)(1) of this section is reduced—
(i) For fiscal year 2015, by 33 1/3 percent;
(ii) For fiscal year 2016, by 66 2/3 percent; and
(iii) For fiscal year 2017 and subsequent fiscal years, by 100 percent.

(3) Beginning fiscal year 2015, in the case of a “subsection (d) hospital,” as defined under section 1886(d)(1)(B) of the Act, that is not a meaningful electronic health record (EHR) user as defined in part 495 of this chapter for the applicable EHR reporting period and does not receive an exception, three-fourths of the applicable percentage change specified in paragraph (d)(1) of this section is reduced—

(ii) For fiscal year 2010, for discharges—
(A) On or after October 1, 2009 and before April 1, 2010, the percentage increase in the market basket index for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas; and
(B) On or after April 1, 2010 and before October 1, 2010, the percentage increase in the market basket index minus 0.25 percentage points for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(iii) For fiscal year 2011, the percentage increase in the market basket index minus 0.25 percentage points for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(iv) For fiscal years 2012 and 2013, the percentage increase in the market basket index less a multifactor productivity adjustment (as determined by CMS) and less 0.1 percentage point for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.
(v) For fiscal year 2014, the percentage increase in the market basket index less a multifactor productivity adjustment (as determined by CMS) and less 0.3 percentage point for prospective payment hospitals (as defined in §413.40(a) of this subchapter) for hospitals in all areas.

(2)(i) In the case of a “subsection (d) hospital,” as defined under section 1886(d)(1)(B) of the Act, that does not submit quality data on a quarterly basis to CMS, in the form and manner specified by CMS, the applicable percentage change specified in paragraph (d)(1) of this section is reduced—
(A) For fiscal years 2005 and 2006, by 0.4 percentage points; and
(B) For fiscal year 2007 through 2014, by 2 percentage points.
(C) For fiscal year 2015 and subsequent fiscal years, by one-fourth.
(ii) Any reduction of the percentage change will apply only to the fiscal year involved and will not be taken into account in computing the applicable percentage change for a subsequent fiscal year.

(3) Beginning fiscal year 2015, in the case of a “subsection (d) hospital,” as defined under section 1886(d)(1)(B) of the Act, that is not a meaningful electronic health record (EHR) user as defined in part 495 of this chapter for the applicable EHR reporting period and does not receive an exception, three-fourths of the applicable percentage change specified in paragraph (d)(1) of this section is reduced—

(i) For fiscal year 2015, by 33 1/3 percent;
(ii) For fiscal year 2016, by 66 2/3 percent; and
(iii) For fiscal year 2017 and subsequent fiscal years, by 100 percent.

(4) Exception—(i) General rules. The Secretary may, on a case-by-case basis, exempt an eligible hospital that is not a qualifying eligible hospital from the application of the reduction under paragraph (d)(3) of this section if the Secretary determines that compliance with the requirement for being a meaningful EHR user would result in a significant hardship for the eligible hospital.
(ii) To be considered for an exception, a hospital must submit an application, in the manner specified by CMS, demonstrating that it meets one or more than one of the criteria specified in this paragraph (d)(3) of this section. These types of exceptions are subject to annual renewal, but in no case may a hospital be granted this type of exception for more than 5 years. (See §495.4 for definitions of payment adjustment year, EHR reporting period, and meaningful EHR user.)

(A) During any 90-day period from the beginning of the fiscal year that is 2 years before the payment adjustment year to April 1 of the year before the payment adjustment year, the hospital was located in an area without sufficient Internet access to comply with the meaningful use objectives requiring Internet connectivity, and faced insurmountable barriers to obtaining such Internet connectivity. Applications requesting this exception must be submitted by April 1 of the year before the applicable payment adjustment year.

(B)(1) During the fiscal year that is 2 fiscal years before the payment adjustment year, the hospital that has previously demonstrated meaningful use
faces extreme and uncontrollable circumstances that prevent it from becoming a meaningful EHR user. Applications requesting this exception must be submitted by April 1 of the year before the applicable payment adjustment year.

(2) During the fiscal year preceding the payment adjustment year, the hospital that has not previously demonstrated meaningful use faces extreme and uncontrollable circumstances that prevent it from becoming a meaningful EHR user. Applications requesting this exception must be submitted by April 1 of the year before the applicable payment adjustment year.

(C) The hospital is new in the payment adjustment year, and has not previously operated (under previous or present ownership). This exception expires beginning with the first Federal fiscal year that begins on or after the hospital has had at least one 12-month (or longer) cost reporting period after they accept their first Medicare covered patient. For purposes of this exception, the following hospitals are not considered new hospitals:

(1) A hospital that builds new or replacement facilities at the same or another location even if coincidental with a change of ownership, a change in management, or a lease arrangement.

(2) A hospital that closes and subsequently reopens.

(3) A hospital that changes its status from a CAH to a hospital that is subject to the Medicare hospital inpatient prospective payment systems.

(5) A State in which hospitals are paid for services under section 1814(b)(3) of the Act must—

(i) Adjust the payments to each eligible hospital in the State that is not a meaningful EHR user in a manner that is designed to result in an aggregate reduction in payments to hospitals in the State that is equivalent to the aggregate reduction that would have occurred if payments had been reduced to each eligible hospital in the State in a manner comparable to the reduction under paragraph (d)(3) of this section; and

(ii) Provide to the Secretary, by January 1, 2013, a report on the method that it proposes to employ in order to make the requisite payment adjustment described in paragraph (d)(5)(i) of this section.

(e) Maintaining budget neutrality. (1) CMS makes an adjustment to the standardized amount to ensure that—

(i) Changes to the DRG classifications and recalibrations of the DRG relative weights are made in a manner so that aggregate payments to hospitals are not affected; and

(ii) Except as provided in paragraph (e)(4) of this section, the annual updates and adjustments to the wage index under paragraph (h) of this section are made in a manner that ensures that aggregate payments are not affected; and

(2) CMS also makes an adjustment to the rates to ensure that aggregate payments after implementation of reclassifications under subpart L of this part are equal to the aggregate prospective payments that would have been made in the absence of these provisions.

(3) To the extent CMS determines that changes to the DRG classification and recalibrations of the DRG relative weights for a previous year (or estimates that such adjustments for a future fiscal year did or are likely to result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in coding or classification of discharges that do not reflect real changes in case mix, CMS may adjust the standardized amount for subsequent fiscal years so as to eliminate the effect of such coding and classification changes.

(4) CMS makes an adjustment to the wage index to ensure that aggregate payments after implementation of the rural floor under section 410 of the Balanced Budget Act of 1997 (Pub. L. 105–33) and the imputed floor under paragraph (h)(4) of this section are equal to the aggregate prospective payments that would have been made in the absence of such provisions as follows:

(i) Beginning October 1, 2008, such adjustment is transitioned from a nationwide to a statewide adjustment as follows:

(A) From October 1, 2008 through September 30, 2009, the wage index is a blend of 20 percent of a wage index with
a statewide adjustment and 80 percent of a wage index with a nationwide adjustment.

(B) From October 1, 2009 through September 30, 2010, the wage index is a blend of 50 percent of a wage index with a statewide adjustment and 50 percent of a wage index with a nationwide adjustment.

(ii) Beginning October 1, 2010, such adjustment is a full nationwide adjustment.

(f) Adjustment for outlier payments. CMS reduces the adjusted average standardized amount determined under paragraph (c) through (e) of this section by a proportion equal to the proportion (estimated by CMS) to the total amount of payments based on DRG prospective payment rates that are additional payments for outlier cases under subpart F of this part.

(g) Computing Federal rates for inpatient operating costs for hospitals located in all areas. For each discharge classified within a DRG, CMS establishes for the fiscal year a national prospective payment rate for inpatient operating costs based on the standardized amount for the fiscal year and the weighting factor determined under §412.60(b) for that DRG.

(b) Adjusting for different area wage levels. CMS adjusts the proportion of the Federal rate for inpatient operating costs that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by CMS based on survey data) reflecting the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (b) of this section) of the hospital compared to the national average level of hospital wages and wage-related costs. The adjustment described in this paragraph (h) also takes into account the earnings and paid hours of employment by occupational category.

(i) The wage index is updated annually.

(2) CMS determines the proportion of the Federal rate that is attributable to wages and labor-related costs from time to time, employing a methodology that is described in the annual regulation updating the system of payment for inpatient hospital operating costs.

(3) For discharges occurring on or after October 1, 2004, CMS employs 62 percent as the proportion of the rate that is adjusted for the relative level of hospital wages and wage-related costs, unless employing that percentage would result in lower payments for the hospital than employing the proportion determined under the methodology described in paragraph (h)(2) of this section.

(4) For discharges on or after October 1, 2004 and before October 1, 2014, CMS establishes a minimum wage index for each all-urban State, as defined in paragraph (h)(5) of this section. This minimum wage index value is computed using the following methodology:

(i) CMS computes the ratio of the lowest-to-highest wage index for each all-urban State;

(ii) CMS computes the average of the ratios of the lowest-to-highest wage indexes of all the all-urban States;

(iii) For each all-urban State, CMS determines the higher of the State’s own lowest-to-highest rate (as determined under paragraph (h)(4)(i) of this section) or the average lowest-to-highest rate (as determined under paragraph (h)(4)(ii) of this section);

(iv) For each State, CMS multiplies the rate determined under paragraph (h)(4)(iii) of this section by the highest wage index value in the State;

(v) The product determined under paragraph (h)(4)(iv) of this section is the minimum wage index value for the State, except as provided under paragraph (h)(4)(vi) of this section;

(vi) For discharges on or after October 1, 2012 and before October 1, 2014, the minimum wage index value for the State is the higher of the value determined under paragraph (h)(4)(i) of this section or the value computed using the following alternative methodology:

(A) CMS estimates a percentage representing the average percentage increase in wage index for hospitals receiving the rural floor due to such floor.

(B) For each all-urban State, CMS makes a onetime determination of the lowest hospital wage index in the State (including all adjustments to the hospital’s wage index, except for the rural
floor, the rural floor budget neutrality, and the outmigration adjustment) and increases this wage index by the percentage determined under paragraph (h)(4)(vi)(A) of this section, the result of which establishes the alternative minimum wage index value for the State.

(5) An all-urban State is a State with no rural areas, as defined in this section, or a State in which there are no hospitals classified as rural. A State with rural areas and with hospitals reclassified as rural under §412.103 is not an all-urban State.

(6) If a new rural hospital that is subject to the hospital inpatient prospective payment system opens in a State that has an imputed rural floor and has rural areas, CMS uses the imputed floor as the hospital’s wage index until the hospital’s first cost report as an inpatient prospective payment system provider is contemporaneous with the cost reporting period being used to develop a given fiscal year’s wage index.

(i) Adjusting the wage index to account for commuting patterns of hospital workers—(1) General criteria. For discharges occurring on or after October 1, 2004, CMS adjusts the hospital wage index for hospitals located in qualifying counties to recognize the commuting patterns of hospital employees. A qualifying county is a county that meets all of the following criteria:

(i) Hospital employees in the county commute to work in an MSA (or MSAs) with a wage index (or wage indices) higher than the wage index of the MSA or rural statewide area in which the county is located.

(ii) At least 10 percent of the county’s hospital employees commute to an MSA (or MSAs) with a higher wage index (or wage indices) than the county wage index.

(iii) The 3-year average hourly wage of the hospital(s) in the county equals or exceeds the 3-year average hourly wage of all hospitals in the MSA or rural statewide area in which the county is located.

(2) Amount of adjustment. A hospital located in a county that meets the criteria under paragraphs (i)(1)(i) through (i)(1)(iii) of this section will receive an increase in its wage index that is equal to a weighted average of the difference between the postreclassified wage index of the MSA (or MSAs) with the higher wage index (or wage indices) and the postreclassified wage index of the MSA or rural statewide area in which the qualifying county is located, weighted by the overall percentage of the hospital employees residing in the qualifying county who are employed in any MSA with a higher wage index.

(ii) Process for determining the adjustment. (i) CMS will use the most accurate data available, as determined by CMS, to determine the out-migration percentage for each county.

(ii) CMS will include, in its annual proposed and final notices of updates to the hospital inpatient prospective payment system, a listing of qualifying counties and the hospitals that are eligible to receive the adjustment to their wage indexes for commuting hospital employees, and the wage index increase applicable to each qualifying county.

(iii) Any wage index adjustment made under this paragraph (i) is effective for a period of 3 fiscal years, except that hospitals in a qualifying county may elect to waive the application of the wage index adjustment. A hospital may waive the application of the wage index adjustment by notifying CMS in writing within 45 days after the publication of the annual notice of proposed rulemaking for the hospital inpatient prospective payment system.

(iv) A hospital in a qualifying county that receives a wage index adjustment under this paragraph (i) is not eligible for reclassification under subpart L of this part or section 1886(d)(8) of the Act.

(j) Wage index assignment for rural referral centers for FY 2005. (1) CMS makes an exception to the wage index assignment of a rural referral center for FY 2005 if the rural referral center meets the following conditions:

(i) The rural referral center was reclassified for FY 2004 by the MGCRB to another MSA, but, upon applying to the MGCRB for FY 2005, was found to be ineligible for reclassification because its average hourly wage was less than 84 percent (but greater than 82 percent) of the average hourly wage of the hospitals geographically located in the MSA to which the rural referral
(1) Judicial decision. If a judicial decision reverses a CMS denial of a hospital’s wage data revision request, CMS pays the hospital by applying a revised wage index that reflects the revised wage data as if CMS’s decision had been favorable rather than unfavorable.

(m) Adjusting the wage index to account for the Frontier State floor—(1) General criteria. For discharges occurring on or after October 1, 2010, CMS adjusts the hospital wage index for hospitals located in qualifying States to recognize the wage index floor established for frontier States. A qualifying frontier State meets both of the following criteria:

(i) At least 50 percent of counties located within the State have a reported population density less than 6 persons per square mile.

(ii) The State does not receive a nonlabor-related share adjustment determined by the Secretary to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(2) Amount of wage index adjustment. A hospital located in a qualifying State will receive a wage index value not less than 1.00.

(3) Process for determining and posting wage index adjustments. (i) CMS uses the most recent Population Estimate data published by the U.S. Census Bureau to determine county definitions and population density. This analysis will be periodically revised, such as for updates to the decennial census data.

(ii) CMS will include a listing of qualifying frontier States and denote the hospitals receiving a wage index increase attributable to this provision in its annual updates to the hospital inpatient prospective payment system published in the FEDERAL REGISTER.