

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA-1021-NC]

RIN 0938-AJ09

Medicare Program; Sustainable Growth Rate for Fiscal Year 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces the fiscal year 1999 sustainable growth rate (SGR) for expenditures for physicians' services under the Medicare Supplementary Medical Insurance (Part B) program as required by section 1848(f) of the Social Security Act. The SGR for fiscal year 1999 is -0.3 percent. The negative fiscal year 1999 SGR is driven by the projected drop in Medicare fee-for-service enrollment.

DATES: *Effective Date:* The provisions of the Medicare SGR for fiscal year 1999 contained in this notice are effective on October 1, 1998.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 2, 1998.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1021-NC, P.O. Box 26688, Baltimore, MD 21207-0488.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmissions. In commenting, please refer to file code HCFA-1021-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's office at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

Comments may also be submitted electronically to the following E-mail

address: HCFA1021NC@hcfa.gov. E-mail comments must include the full name and address of the sender. All comments must be incorporated in the E-mail message because we may not be able to access attachments.

Electronically submitted comments will be available for public inspection at the Independence Avenue address listed above.

Copies: To order paper copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa, Discover or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 (or toll-free at 1-888-293-6498) or by faxing to (202) 512-2250. The cost for each paper copy is \$8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: Elizabeth Holland, (410) 786-1309.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicare Sustainable Growth Rate

Section 1848(f) of the Social Security Act (the Act), as amended by section 4503 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105-33), enacted on August 5, 1997, replaces the volume performance standard with a sustainable growth rate (SGR) standard. It specifies the formula for establishing yearly SGR targets for physicians' services under Medicare. The use of

SGR targets is intended to control the actual growth in Medicare expenditures for physicians' services.

The SGR targets are not limits on expenditures. Payments for services are not withheld if the SGR target is exceeded. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3)(A) of the Act, is adjusted to reflect the success or failure in meeting the SGR target.

Amended section 1848(f)(2) of the Act states that "the SGR for all physicians' services for a fiscal year (beginning with fiscal year 1998) shall be equal to the product of—

(A) 1.0 plus the Secretary's estimate of the weighted-average percentage increase (divided by 100) in the fees for all physicians' services in the fiscal year involved,

(B) 1.0 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare+Choice plan enrollees) from the previous fiscal year to the fiscal year involved,

(C) 1.0 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous fiscal year to the year involved, and

(D) 1.0 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the fiscal year (compared with the previous fiscal year) that will result from changes in law or regulations determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under subsection (d)(3)(B), minus 1 and multiplied by 100."

B. Physicians' Services

Because the scope of physicians' services covered by the SGR is the same as the scope of services that was covered by the Medicare volume performance standards, we are using the same definition of physicians' services for the SGR in this notice as we did for the Medicare volume performance standards published in the **Federal Register** (61 FR 59717) on November 22, 1996. That final notice announced the fiscal year 1997 volume performance standard rates and contained a detailed description of the scope of physicians' services.

II. Provisions of This Notice

Under the requirements in sections 1848(f)(2)(A) through (D) of the Act, as amended by section 4503 of the BBA 1997, we have determined that the SGR for physicians' services for fiscal year

1999 is -0.3 percent. Our determination is based on the following statutory factors:

Statutory factors	Percent change
Fees	2.1
Enrollment	-4.3
Increase in Gross Domestic Product Legislation	1.3
	0.7
Total	-0.3

The specific calculations to determine the -0.3 SGR for physicians' services for fiscal year 1999 are explained below.

III. Calculation of the Fiscal Year 1999 Sustainable Growth Rate

Our explanation of how we determined the values for each of the four factors used in determining the SGR for fiscal year 1999 is as follows:

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for Fiscal Year 1999

This factor was calculated as a weighted average of the calendar year

1998 and 1999 fee increases that apply during fiscal year 1999. Adjustments to the fee increases, such as the move to a single conversion factor, are accounted for in Factor 4 (the increase in expenditures resulting from changes in law or regulations).

Most of the fees for physicians' services (as defined in section I. B. of this final notice) are updated by the Medicare Economic Index (MEI). However, the BBA 1997 provided for a 0.0 percent update for laboratory services, which represent about 13 percent of the Medicare-allowed charges for physicians' services. The following table, therefore, shows both the MEI and laboratory service updates that were used in determining the percentage increase in physicians' fees for fiscal year 1999.

MEDICARE ECONOMIC INDEX AND LABORATORY SERVICE UPDATE FOR CALENDAR YEARS 1998 AND 1999

	1998	1999
Medicare Economic Index	2.2	2.4
Laboratory Service	0.0	0.0

After taking into account all the elements described above, we estimate that the weighted-average increase in fees for physicians' services in fiscal year 1999, before applying any legislative adjustments to the MEI, will be 2.1 percent for all physicians' services.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees from Fiscal Year 1998 to Fiscal Year 1999

Due to the rapid growth in Medicare+Choice plan enrollees (whose Medicare-covered medical care is outside the scope of the SGR), we estimate that the average number of Medicare Part B enrollees, excluding those in Medicare+Choice plans, will decline by 4.3 percent. This decline was derived as follows:

Fiscal year	Average Medicare part B enrollment (in millions)		
	Overall	Medicare+Choice	Overall, excluding Medicare+Choice
1998	36.609	5.526	31.083
1999	36.876	7.131	29.745
Percent change			-4.3

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in Fiscal Year 1999

Section 1848(f)(2)(C) of the Act, as amended by section 4503 of the BBA 1997, requires the Secretary to project real gross domestic product per capita growth for the coming fiscal year. In calculating the SGR, we estimate that this growth will be 1.3 percent in fiscal year 1999.

Factor 4—Percentage Increase in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in Fiscal Year 1999 Compared With Fiscal Year 1998

Legislative changes contained in the BBA 1997 will affect expenditures for physicians' services in fiscal year 1999. The most significant change is the coverage of diabetes outpatient self-management training services. In addition, residual effects will result in fiscal year 1999 from the calendar year implementation of the following legislative changes:

- The move to a single conversion factor;
- The Medicare coverage changes for screening mammography, colorectal cancer screening, screening PAP smears, and screening pelvic exams; and
- The changes in payments for nurse practitioners, clinical nurse specialists, and physician assistants.

In response to changes associated with implementation of the 1998 physician fee schedule, we indicated in the October 31, 1997 **Federal Register** final rule (62 FR 59265) that we anticipated that the volume and intensity of physicians' services furnished to Medicare beneficiaries would increase by 0.1 percent. We made a compensating 0.1 percent reduction in the conversion factor. At this point, based on the June 5, 1998 proposed rule (63 FR 30818), we anticipate a 0.3 percent increase in the volume and intensity of physicians' services during 1999 and that we would make a compensating 0.3 percent reduction in the conversion factor to assure budget

neutrality. For fiscal year 1999, the weighted average of the calendar year responses is expected to increase Medicare outlays for physicians' services by 0.2 percent.

Taking into account all of the provisions resulting from changes in law or regulation, the increase in expenditures for physicians' services is estimated to be 0.7 percent.

The establishment of the SGR for any year involves the use of projected values for Medicare beneficiary fee-for-service enrollment and the real gross domestic product per capita. In addition, publication of the fiscal year SGR (3 months ahead of publication of the calendar year update) also involves use of estimated values for the MEI and for the CPI-U for laboratory service fee increases, as well as volume and intensity changes in response to the Medicare physician fee schedule and relative value unit changes for the calendar year. The BBA 1997 clearly anticipated that estimated values would be used; the statute specifies that each

of the four factors would be "the Secretary's estimate."

While we will use our best efforts to make estimates at the time the SGR is established, we are concerned that there will be differences compared to later estimates of some of the components of the SGR. In some cases, such as projections of Medicare beneficiary fee-for-service enrollment, the differences between the initial estimate and a later estimate could be large and as a result could affect the SGR by as much as 1 percentage point. The difference could occur in either direction as our initial estimates could turn out to be higher or lower than later estimates. For example, in Factor 2, we have projected that Part B fee-for-service enrollees will decrease in FY 1999 by 4.3 percent, primarily because of enrollment in the new Medicare+Choice options that are excluded from the SGR. However, we actually use the FY 1999 SGR for purposes of establishing the update for CY 2000; at that time, we will have a more recent estimate of the number of enrollees, and that number could be significantly different from the projected 4.3 percent decrease. A projection difference of only 1 percentage point would affect roughly \$400 million in spending under the physician fee schedule.

We do not believe that the Congress, in enacting the SGR, contemplated such significant variances between estimates made at different points in time. Therefore, we are considering whether we should "adjust" the SGR or the update for a year, to take into account more recent estimates, when the subsequent year's update is determined. Such an adjustment for estimate differences would assure that the update

is related to actual performance. However, we have concerns about how this could best be accomplished, if at all, under current law. Therefore, we invite comments specifically with regard to how an adjustment could be effected consistent with the law and we will respond in a future notice.

IV. Technical Problems With the Sustainable Growth Rate System

We have begun to forecast the SGR for future years, and it appears that there is some instability in the SGR system. In the long-term, updates could oscillate between the maximum increase and decrease adjustments due to the use of mismatched time periods and the lag between measurement periods. The solution would be technical and would involve the matching of time periods for the SGR calculation, the actual versus target measurement, and the update adjustment. We will continue to study this potential problem and will propose a legislative or regulatory remedy in the future as appropriate.

V. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and suppliers as small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural

hospitals. That analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Legislative changes contained in the BBA 1997 will affect expenditures for physicians' services in fiscal year 1999, although the impact will be slight, and residual effects will result in fiscal year 1999 from the calendar year implementation of the legislative changes described under Factor 4 in section III. of this notice.

We are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Sections 1848(d) and (f) of the Social Security Act)

(42 U.S.C. 1395w-4(d) and (f))

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

Dated: July 31, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: October 6, 1998.

Donna E. Shalala,

Secretary.

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