

power and responsibilities among the various levels of government.”

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of methyl bromide. EPA is not aware of any current uses of methyl bromide by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply. This rule is not subject to E.O. 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards.

Therefore, EPA is not considering the use of any voluntary consensus standards.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

[FR Doc. 03–18855 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 411

[CMS–6014–P]

RIN 0938–AL14

Medicare Program; Interest Calculation

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the way we calculate interest, on Medicare overpayments and underpayments to providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans to be more reflective of current business practices. This change would reduce the amount of interest assessed on overpayments and underpayments and simplify the way the interest is calculated.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–6014–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following addresses ONLY: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–6014–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 445–G, 200 Independence Avenue, SW., Washington, DC 21201, or Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Braymer, (410) 786-4323.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after the publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule and appointment to view public comments, telephone (410) 786-7197.

Copies: To order 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 payable to the Superintendent of Documents, or enclose your Visa 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 copy is \$9. 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**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: <http://www.access.gpo.gov/nara/index.html>.

I. Background

A. Interest Calculation

Sections 1815(d) and 1833(j) of the Social Security Act (the Act) require that whenever a payment to a provider, supplier, or other entity is more than (overpayment) or less than (underpayment) the amount that was due to the provider, supplier, or other entity, we assess interest on the amount of the overpayment that the provider, supplier, or other entity owes to us or the underpayment that we owe to the provider, supplier, or other entity. This interest becomes due if the overpayment amount owed to us or the underpayment amount owed by us is

not paid within 30 days of the date of the final determination of the overpayment or underpayment. We determine the rate of interest in accordance with 42 CFR 405.378 by comparing the Private Consumer Rate with the Current Value of Funds Rate and assessing the interest at the higher of the two rates that is in effect on the date of the final determination of the amount of the overpayment or underpayment.

Interest is calculated from the date of the final determination and is owed if the amount of the overpayment or underpayment is not paid within 30 days. Interest is calculated in 30-day periods. A period that is less than 30 days is considered to be a full 30-day period.

In this proposed rule, we are proposing to change the method of calculating the amount of interest that is assessed on overpayments and underpayments to better align our practices to a commercial business model. We now assess interest prospectively (30 days into the future). Under private sector practices, interest is assessed on delinquent debts retrospectively.

We are proposing that periods of less than 30 days would not be treated as a full 30-day period. Interest would be assessed only for full 30-day periods when payment is not made on time.

The change in the method of calculation would apply only to overpayments and underpayments whose date of final determination occurred after the effective date of the final regulation implementing this proposed rule.

B. Technical Correction

We are making a technical correction to correct a reference that was cited in a previous revision of the Code of Federal Regulations (CFR). In § 411.24, the rate of interest to be assessed on the recovery of Medicare conditional payments is incorrectly referenced as appearing in § 405.376(d), rather than § 405.378(d), which is the correct reference.

II. Provisions of the Proposed Regulations

The provisions of this proposed rule are as follows:

- In § 405.378, we would revise paragraph (b)(2) to delete the requirement that periods of less than 30 days be treated as a full 30-day period.
- In § 411.24, we would revise paragraph (m)(2)(iii) to correct the reference to § 405.376(d) by changing the reference to § 405.378(d).

III. 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 (OMB) under the authority of the Paperwork Reduction Act of 1995 (PRA).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

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 proposed rule is not a major rule. It simply changes the way we calculate interest on overpayments and underpayments. It does not change how overpayments or underpayments are determined, nor does it require providers, suppliers, or other entities to change the way they interact with us in determining overpayments and underpayments.

During fiscal year (FY) 2001, we recovered \$167 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been \$153 million, a difference of \$14 million due to the change in the interest calculation. During FY 2002, we recovered \$115.7 million in interest on delinquent

overpayments. Had this proposed rule been in effect, interest recoveries would have been \$106.1 million, a difference of \$9.6 million. During FY 2001, we paid \$2.6 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been \$2.4 million, a difference of \$0.2 million. During FY 2002, we paid \$5.2 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been \$4.8 million, a difference of \$0.4 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. Most hospitals, and most other providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans are small entities, either by nonprofit status or by having revenues of \$29 million or less in any 1 year. During FY 2001, we recovered \$167 million in interest on delinquent overpayments; during FY 2002, we recovered \$115.7 million. Had this proposed rule been in effect, interest recoveries would have been \$153 million during FY 2001 and \$106.1 million during FY 2002, a difference of \$14 million and \$9.6 million, respectively. This would amount to 0.1 percent of the \$13.5 billion in overpayments recovered during FY 2001 and less than 0.1 percent of the \$13.4 billion recovered during FY 2002. During FY 2001, we paid \$2.6 million in interest on underpayments; during FY 2002, we paid \$5.2 million. Had this proposed rule been in effect, we would have paid \$2.4 million during FY 2001 and \$4.8 million during FY 2002, a difference of \$0.2 million and \$0.4 million, respectively. This would amount to less than 0.1 percent of the \$236 billion and \$246.8 billion in benefit payments made during FY 2001 and FY 2002. For further details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This 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 100 beds.

This proposed rule has no operations impact on any provider, supplier, or other entity including small rural

hospitals. The proposed rule simply changes the way we calculate interest we assess on overpayments and underpayments. It does not change how overpayments or underpayments are determined nor require providers, suppliers, or other entities to change how they interact with us in determining overpayments or underpayments. Therefore, we have determined that this proposed rule would not have a significant effect on the operations of a substantial number of rural hospitals. Because the interest we collect in a year far exceeds the interest we pay, the majority of providers, suppliers, and other entities would benefit from changing the method of calculating interest.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. During FY 2001 and FY 2002, we recovered \$167 million and \$115.7 million, respectively, in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been \$153 million during FY 2001, a difference of \$14 million. For FY 2002, interest recoveries would have been \$106.1 million, a difference of \$9.6 million. During FY 2001, we paid \$2.6 million in interest on underpayments. Had this proposed rule been in effect, we would have paid \$2.4 million, a difference of \$0.2 million. During FY 2002, we paid \$5.2 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been \$4.8 million, a difference of \$0.4 million.

This proposed rule would have no impact on State, local, or tribal governments. It would reduce annual expenditures by providers, suppliers, or other entities in the private sector because it changes the way that we compute interest on any delinquent overpayments owed to us. Additionally, the change in interest calculation that we pay on underpayments owed to providers, suppliers, and other entities would not be an expenditure by a State, local, or tribal government.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no

direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. By changing how we calculate interest, we are reducing the amount of interest assessed on overpayments owed to us and underpayments owed by us to providers, suppliers, and other entities.

B. Effects on the Medicare and Medicaid Programs

This proposed rule would reduce the amount of interest assessed on Medicare overpayments and underpayments. During FY 2001, we recovered \$167 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been \$153 million, a difference of \$14 million. During FY 2001, we paid \$2.6 million in interest on underpayments. Had this proposed rule been in effect, we would have paid \$2.4 million, a difference of \$0.2 million. During FY 2002, we recovered \$115.7 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been \$106.1 million, a difference of \$9.6 million. During FY 2002, we paid \$5.2 million in interest on underpayments. Had this proposed rule been in effect, we would have paid \$4.8 million, a difference of \$0.4 million. There is no effect on the Medicaid program.

C. Alternatives Considered

We considered a number of other methods to use in calculating the amount of interest owed. We assessed the relative merits of alternative calculation methods based on two primary criteria: Comparability to a commercial business model and secondly, relative ease and cost of administration. Applying the first criterion precludes continuing our current calculation method. Under the proposed rule, we would be able to use commercially obtained off-the-shelf software to calculate interest. As in the private sector, the debtor would still have a set payment period (30 days) to pay the amount owed without additional interest being assessed during the payment period. We considered calculating and assessing interest on a daily basis but determined this would be prohibitively expensive and administratively burdensome for Medicare contractors, providers and beneficiaries.

D. Conclusion

This proposed rule is not a major rule. It would not change the way overpayments or underpayments are

determined. It would not have a significant impact on a substantial number of rural hospitals. Since a partial period would no longer be considered a full 30-day period, interest assessed on amounts owed to us would be reduced. Therefore, this proposed rule would reduce State, local, and tribal government expenditures. The proposed rule does not impose any direct requirement costs on State and local governments and does not preempt State law or have any Federalism implications.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

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

List of Subjects Affected

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart C, continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1351, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

Subpart C—Suspension of Payment, Recovery of Overpayments, and Recovery of Scholarships and Loans

2. In § 405.378, paragraph (b)(2) is revised to read as follows:

§ 405.378 Interest charges on overpayments and underpayments to providers, suppliers, and other entities.

- * * * * *
- (b) * * *
- (1) * * *

(2) Interest will accrue from the date of the final determination as defined in paragraph (c) of this section, and will either be charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Insurance Coverage That Limits Medicare Payment; General Provisions

4. In § 411.24, paragraph (m)(2)(iii) is revised to read as follows:

§ 411.24 Recovery of conditional payments.

* * * * *

(m) * * *

(2) * * *

(iii) The rate of interest is that provided at § 405.378(d) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 10, 2002.

Thomas A. Scully,
Administrator, Centers for Medicare & Medicaid Services.

Approved: April 10, 2003.

Tommy G. Thompson,
Secretary.
[FR Doc. 03-18859 Filed 7-24-03; 8:45 am]
BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 406

[CMS-4018-P]

RIN 0938-AK94

Medicare Program; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would conform the existing Medicare eligibility regulations to reflect a change made by the Ticket to Work and Work Incentives Improvement Act of 1999. That statutory change, which was implemented effective October 1, 2000, provides working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the previous limit of 24 months, for a total of 78 months of Medicare coverage following the 15th month of the reentitlement period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS-4018-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4018-P, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-8010. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Denise Cox, (410) 786-3195.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document,