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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 410, 416, and 419

[CMS-1404-CN]

RIN 0938-AP17; RIN 0938-AL80; RIN 0938-AH17

#### Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Changes to the Ambulatory Surgical Center Payment System and CY 2009 Payment Rates; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants—Clarification of Provider and Supplier Termination Policy Medicare and Medicaid Programs: Changes to the Ambulatory Surgical Center Conditions for Coverage

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

**ACTION:** Correction of 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 November 18, 2008, entitled “Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and CY 2009 Payment Rates; Changes to the Ambulatory Surgical Center

Payment System and CY 2009 Payment Rates; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants—Clarification of Provider and Supplier Termination Policy Medicare and Medicaid Programs: Changes to the Ambulatory Surgical Center Conditions for Coverage” (hereinafter referred to as the CY 2009 OPPS/ASC final rule with comment period).

**DATES:** *Effective Date:* this document is effective on January 26, 2009.

*Applicability Date:* The corrections in this document are applicable on and after January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Alberta Dwivedi, (410) 786-0378.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. E8-26212 of November 18, 2008 (73 FR 68502), there were a few technical errors that are identified in the “Summary of Errors” section and corrected in the “Correction of Errors” section below.

**II. Summary of Errors**

We incorrectly determined the CY 2009 status indicator for new CY 2009 Healthcare Common Procedure Coding System (HCPCS) code J3300 (Injection, triamcinolone acetone, preservative free, 1 mg) and, as a result, incorrectly assigned HCPCS code J3300 status indicator “N.” Status indicator “N” indicates that items and services are packaged into ambulatory payment classification (APC) rates. Payment for those items and services assigned status indicator “N” is packaged into payment for other services, including, for example, outliers, and, therefore, there is no separate APC payment. The CY 2009 OPPS/ASC final rule with comment period included several Addenda. The erroneous assignment of status indicator “N” to HCPCS code J3300 appears in Addendum B on page 69228. On that page, we are changing

the status indicator of HCPCS code J3300 from “N” to “K” (Nonpass-Through Drugs and Biologicals; Paid under OPPS; separate APC payment) to correctly reflect its separately payable status for CY 2009. As a result of our error in determining the status indicator of HCPCS code J3300, and the corresponding incorrect indication of status indicator “N” in Addendum B, we need to make two additional conforming changes.

Because we incorrectly packaged HCPCS code J3300 in the CY 2009 OPPS/ASC final rule with comment period, we provided no APC assignment for the HCPCS code in that rule. With the correct assignment of status indicator “K” to HCPCS code J3300, an APC must be established for payment, because each separately payable drug or biological is assigned to its own unique APC under the OPPS. Therefore, in Addendum A, on page 68831, we are adding APC 1253 (Triamcinolone A inj PRS-free) with status indicator “K.” Also, in Addendum BB, on page 69301, a similar change to that made in Addendum B needs to be made to correspond to the Ambulatory Surgical Center (ASC) payment system. Accordingly, we are changing the ASC payment indicator for HCPCS code J3300 from “N1” to “K2” (Drugs and biologicals paid separately when provided integral to a surgical procedure on ASC list; payment based on OPPS rate) to correctly reflect separate payment of HCPCS code J3300 under the ASC payment system.

**III. Correction of Errors**

In FR Doc. E8-26212 of November 18, 2008 (73 FR 68502), make the following corrections:

**Addendum A.—Final OPPS APCs for CY 2009**

1. On page 68831, in column 1, insert between APC 1251 and APC 1280, lines 24 and 25, the final OPPS CY 2009 entry for APC 1253 to read as follows:

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1253 .....	Triamcinolone A inj PRS-free .....	K	.....	\$3.18	.....	\$0.64

**Addendum B.—Final OPPTS Payment by HCPCS Code for CY 2009**

2. On page 69228, in line 31, for HCPCS Code J3300—

- A. In column 4, the status indicator “N” is corrected to read “K.”
- B. In column 5, the APC is corrected to read “1253.”
- C. In column 7, the payment rate is corrected to read “\$3.18.”

D. In column 9, the minimum unadjusted copayment is corrected to read “\$0.64.”

The HCPCS Code for J3300 should read as follows:

HCPCS Code	Short descriptor	CI	SI	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J3300 .....	Triamcinolone A inj PRS-free .....	NI	K	1253	.....	\$3.18	.....	\$0.64

**Addendum BB.—Final ASC Covered Ancillary Services Integral to Covered Surgical Procedures for CY 2009 (Including Ancillary Services for Which Payment Is Packaged)**

3. On page 69301, in line 37, for HCPCS Code J3300—

- A. In column 4, the payment indicator “N1” is corrected to read “K2.”
- B. In column 6, the CY 2009 second year transition payment is corrected to read “\$3.18.”

**IV. Waiver of Proposed Rulemaking and Delay in Effective Date**

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 such as this take effect, in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary or contrary to the public interest to follow the notice and comment procedure or to comply with the 30-day delay in the effective date, and incorporates a statement of the finding and the reasons in the notice.

The policies and payment methodologies finalized in the CY 2009 OPPTS/ASC final rule with comment period have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the CY 2009 OPPTS/ASC final rule with comment period that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodologies that were finalized in the final rule with comment period. In order to conform the document to the final policies of the CY 2009 OPPTS/ASC final rule with comment period, this notice makes changes to revise inaccurate tabular

information. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. In addition, we believe it is important for the public to have the correct information as soon as possible and find no reason to delay the dissemination of it. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

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

Dated: January 16, 2009.

**Ann Agnew,**

*Executive Secretary to the Department.*

[FR Doc. E9–1519 Filed 1–23–09; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Chapter 1**

[FCC 08–243; WT Docket No. 00–230]

**Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In the Second Order on Reconsideration, the Commission denies a petition for reconsideration or, in the alternative, clarification filed by T-Mobile USA, Inc. with respect to the Commission’s Secondary Markets Second Report and Order (Second R&O) in this proceeding.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Spectrum and Competition Policy Division: Paul D’Ari at (202) 418–1550.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Second

Order on Reconsideration, WT Docket No. 00–230, adopted on October 9, 2008 and released on October 17, 2008. The full text of this document is available on the Internet at the Commission’s Web site: [http://hraunfoss.fcc.gov/edocs\\_public](http://hraunfoss.fcc.gov/edocs_public). It is also available for inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. You may purchase the Second Order on Reconsideration from the Commission’s duplicating contractor, Best Copy & Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 08–243.

**Summary of the Second Order on Reconsideration**

1. The Second Order on Reconsideration denies a Petition for Reconsideration or, in the Alternative, Clarification (Petition) filed by T-Mobile USA, Inc. (T-Mobile). In the Second R&O, the Commission took several steps to facilitate the development of secondary markets in spectrum usage rights involving Wireless Radio Services. Among other things, the Commission established immediate approval procedures for spectrum leasing arrangements and license assignments and transfers of control where the potential lessee or assignee/transferee could certify either (1) that it does not have more than 25 percent indirect foreign ownership, or (2) that it has previously obtained a declaratory ruling from the Commission establishing that the proposed transaction falls within the scope of that declaratory ruling, including with respect to type of service and geographic coverage area, and that there has been no change in foreign ownership in the