

Commodity	Parts per million
Pepper, bell .....	0.02
Pepper, non-bell .....	0.02
Rice, grain .....	0.02
Tomato .....	0.02

(b) *Section 18 emergency exemptions.*  
[Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.*  
[Reserved]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 412, 413, 422, and 495**

[CMS-0033-F2]

RIN 0938-AP78

**Medicare and Medicaid Programs; Electronic Health Record Incentive Program; Correcting Amendment**

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects typographical and technical errors identified in the final rule entitled “Medicare and Medicaid Programs; Electronic Health Record Incentive Program” that appeared in the July 28, 2010 *Federal Register*.

**DATES:** *Effective Date:* This correcting amendment is effective December 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Rachel Maisler, (410) 786-5754.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 2010-17207 (75 FR 44314) the final rule entitled “Medicare and Medicaid Programs; Electronic Health Record Incentive Program” (hereinafter referred to as the Medicare and Medicaid EHR Incentive Program), there were several technical and typographical errors that are identified in the Summary of Errors section and corrected in the Correction of Errors section and in the regulations text of this correcting amendment.

**II. Summary of Errors**

*A. Errors in the Preamble*

In the preamble to this final rule, we made the following technical and typographical errors.

On page 44314, in the **FOR FURTHER INFORMATION CONTACT**, we are correcting the contact information for Medicaid incentive payment issues for better accuracy.

On page 44337, in our response to a comment on the objective generate and transmit permissible prescriptions electronically, we inadvertently referenced only the restrictions established by the Department of Justice (DOJ) on electronic prescribing for controlled substances in Schedule II, when in fact we meant to include Schedule II-V. We intended to encompass all prescriptions where e-prescribing is not permitted, so we are including Schedules III-V. At the time of the publication of the our January 13, 2010 proposed rule, the Drug Enforcement Agency (DEA) had not published its March 31, 2010 final rule (75 FR 16236) on the electronic prescribing of controlled substances. We are aligning our regulation with the DEA regulations regarding electronic prescribing of controlled substances by adding schedules II-V so that we are in line with DEA regulation.

On page 44351, in our discussion of the proposed rule EP/Eligible Hospital Measure, we erroneously referred to “five rules” related to clinical decision support although we reduced that requirement to one rule.

On page 44359, in our response to a comment regarding charging fees, we inadvertently omitted a word. Also, in our discussion of the numerator and denominator for the clinical summary objective, we inadvertently referred to unique patients, rather than to office visits. As the measure for this objective relies on office visits (see § 495.6(d)(13)), we are correcting the preamble to also refer to office visits. We have also eliminated a reference in the preamble to eligible hospitals and CAHs in the threshold for this objective, as the objective applies only to EPs.

On pages 44440 and 44442, we are revising our discussions of hospital-based EPs, so that they correctly refer to EPs that furnish “90 percent or more,” (rather than “more than 90 percent”) of their covered professional services in an inpatient or emergency department setting. This is in keeping with the definition in § 495.4.

On page 44487, we are correcting the preamble to more precisely state that the 90-day period for deriving hospitals’ patient volume is based on the

preceding fiscal year. This is in keeping with § 495.306, which specifically references the fiscal year.

Also, on page 44487 and page 44488 we inadvertently referred to hospitals when discussing the patient panel methodology for estimating Medicaid patient volume. As the patient panel methodology will be used only by EPs (and as our regulation cites only to EPs when discussing the patient panel methodology—see § 495.306(d)), we are eliminating the references to hospitals.

On page 44488, we incorrectly included “unduplicated Medicaid encounters” in the last sentence, instead of “unduplicated encounters.” This correction allows for us to keep the numerator and denominator consistent when determining the Medicaid patient volume.

On pages 44499, 44518, 44549, and 44562, we made typographical errors which include errors in mathematical symbols, column headings, and the numbering and referencing of tables.

*B. Errors in the Regulation Text*

On page 44568, in § 495.6(d)(14)(i), we erroneously omitted medication allergies in the list of examples. Therefore, we are including this reference to be consistent with the preamble of the July 28, 2010 final rule.

On page 44568, in § 495.6(e)(1), we inadvertently omitted a reference to the exclusion for any EP who writes fewer than 100 prescriptions during the EHR reporting period (as discussed in the preamble of the final rule (see page 44336)). Therefore, we are correcting § 495.6(e)(1) by referencing this exclusion in accordance with § 495.6(a)(2) “Implement drug-formulary checks.”

On page 44587, in § 495.366(b)(3), we made inadvertent errors by citing to inpatient and outpatient settings, rather than the inpatient or emergency room settings in a discussion of “hospital-based.”

On page 44588, in § 495.368(c) regarding overpayments, we are correcting the period of consideration for overpayments. We note that section 1903(d)(2) of the Act was amended by section 6506 of the Patient Protection and Affordable Care Act (known as the Affordable Care Act (ACA)). This amendment changed the mandatory time period for collection of overpayments from 60 days to 1 year. Therefore, we are correcting § 495.368(c) to implement this statutory change.

**III. Correction of Errors in the Preamble**

In FR Doc. 2010-17207 of July 28, 2010, we make the following corrections:

1. On page 44314, in the first column, **FOR FURTHER INFORMATION CONTACT** section, lines 3 and 4 the phrase, “Edward Gendron, (410) 786-1064, Medicaid incentive payment issues,” is corrected to read “Jessica Kahn, (410) 786-9361, and Michelle Mills, (410) 786-3854, Medicaid incentive program issues.”

2. On page 44337,

a. Second column, last paragraph, last line, the phrase “Schedule II” is corrected to read “Schedule II-V.”

b. Third column, first partial paragraph,

(1) Line 1, the phrase “Schedule II” is corrected to read “Schedule II-V.”

(2) Line 20 the phrase “Schedule II” is corrected to read “Schedule II-V.”

3. On page 44351, in the first column, fifth paragraph, lines 5 through 11, the sentence “Therefore, we revise this measure to require that at least one of the five rules be related to a clinical quality measure, assuming the EP, eligible hospital or CAH has at least one clinical quality measure relevant to their scope of practice.” is corrected to read “In light of the decision to limit the objective to one clinical decision support rule, we do not believe it is appropriate to further link that rule to a specific clinical quality measure.”

4. On page 44359,

a. First column, first partial paragraph, line 6, “generated certified EHR technology.” is corrected to read “generated by certified EHR technology.”

b. Second column, second full paragraph, lines 4 through 16, the bulleted text beginning with term “Denominator” and ending with phrase “meet this measure” is corrected to read as follows:

- *Denominator*: Number of office visits by the EP during the EHR reporting period.

- *Numerator*: Number of office visits in the denominator for which the patient is provided a clinical summary within 3 business days.”

- *Threshold*: The resulting percentage must be more than 50 percent in order for an EP to meet this measure.”

5. On page 44367, third column, seventh full paragraph, last line, the term “ferquency” is corrected to read “frequency.”

6. On page 44440, second column, last paragraph, lines 11 and 12, the phrase “if more than 90 percent” is corrected to read “if 90 percent or more.”

7. On page 44442, in the first column, first full paragraph, lines 9 and 10, the phrase “if more than 90 percent” is corrected to read “if 90 percent or more.”

8. On page 44487,

a. Top half of the page, second column, third full paragraph, line 13, the phrase “in the preceding calendar year” is corrected to read “in the preceding calendar year (fiscal year for hospitals).”

b. Bottom half of the page, third column, last paragraph, lines 4 and 5, the phrase “individual hospital’s or EP’s” is corrected to read “individual EP’s.”

9. On page 44488, in the first column, first partial paragraph, line 20, the phrase “or hospital” is deleted. Line 25, the phrase, “unduplicated Medicaid encounters” is corrected to read “unduplicated encounters.”

10. On page 44499, in the middle of the page, in Table 19: Hospital Incentives, second column, the column heading, “CY” is corrected to read “FY.”

11. On page 44518, in first column, first full paragraph, line 23 the figure “- 4,675,161” is corrected to read “4,675,161.”

12. On page 44549, in the third column, first partial paragraph, line 10, the reference “Table 51,” is corrected to read “Table 38.”

13. On page 44562, second fourth of the page, in the table heading, the table number “TABLE 51” is corrected to read “TABLE 38.”

#### 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 rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA also ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

With the exception of the correction to § 495.368(c), the changes made by this notice do not constitute agency rulemaking, and therefore the 60 day comment period and delayed effective date do not apply. This correction

notice merely corrects typographical and technical errors in the EHR incentive program final rule and does not make substantive changes to the July 28, 2010 final rule that would require additional time on which to comment or a delay in effective date. Instead, this correction notice is intended to ensure the accuracy of the final rule.

In addition, even if the notice and comment and delayed effective date procedures applied, we find good cause to waive such procedures. Undertaking further notice and comment procedures to incorporate the corrections in this notice into the final rule or delaying the effective date would delay these corrections beyond the date necessary for EPs, eligible hospitals and CAHs to begin receiving incentive payments, and would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule. The one change we are making, to § 495.368(c), is necessary to comply with a provision of the Affordable Care Act that is already in effect; thus, we find it would be both unnecessary and impracticable to subject such change to a comment period as well as any delay in effective date.

#### List of Subjects

##### 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

##### 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

##### 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

##### 42 CFR Part 495

Administrative practice and procedure, Electronic health records, Health facilities, Health professions, Health maintenance organizations (HMO), Medicaid, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicare Services amends 42 CFR part 495 as follows:

## PART 495—STANDARDS FOR THE ELECTRONIC HEALTH RECORD TECHNOLOGY INCENTIVE PROGRAM

■ 1. The authority citation continues to read as follows:

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

■ 2. Section 495.6 is amended as follows:

■ A. In paragraph (d)(14)(i), remove the parenthetical phrase “(for example, problem list, medication list, allergies, and diagnostic test results)” and add the parenthetical phrase “(for example, problem list, medication list, medication allergies, and diagnostic test results)” in its place.

■ B. Add paragraph (e)(1)(iii) to read as follows:

### § 495.6 Meaningful use objectives and measures for EPs, eligible hospitals, and CAHs.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) *Exclusion in accordance with paragraph (a)(2) of this section.* Any EP who writes fewer than 100 prescriptions during the EHR reporting period.

\* \* \* \* \*

### § 495.366 [Amended]

■ 3. Amend § 495.366(b)(3) by removing the phrase “furnished in a hospital setting, either inpatient or outpatient.” and adding the phrase “furnished in a hospital inpatient or emergency room setting.” in its place.

### § 495.368 [Amended]

■ 4. Amend 495.368(c) by removing the phrase “60 days” and adding the phrase “1 year” in its place.

(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: December 22, 2010.

**Dawn L. Smalls,**

*Executive Secretary to the Department.*

[FR Doc. 2010–32861 Filed 12–28–10; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket ID FEMA–2010–0003]

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) [luis.rodriquez1@dhs.gov](mailto:luis.rodriquez1@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows: