

of Health and Human Services (HHS) issued a department-wide interim final rule titled “Adjustment of Civil Monetary Penalties for Inflation” that established new regulations at 45 CFR part 102 to adjust for inflation the maximum civil monetary penalty amounts for the various civil monetary penalty authorities for all agencies within the Department. HHS took this action to comply with the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (28 U.S.C. 2461 note 2(a)), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of the Bipartisan Budget Act of 2015, (Pub. L. 114–74), enacted on November 2, 2015). In addition, this September 2016 interim final rule included updates to certain agency-specific regulations to reflect the new provisions governing the adjustment of civil monetary penalties for inflation in 45 CFR part 102.

One of the purposes of the Inflation Adjustment Act was to create a mechanism to allow for regular inflationary adjustments to federal civil monetary penalties. Section 2(b)(1) of the Inflation Adjustment Act. The 2015 amendments removed an inflation update exclusion that previously applied to the Social Security Act as well as to the Occupational Safety and Health Act. The 2015 amendments also “reset” the inflation calculations by excluding prior inflationary adjustments under the Inflation Adjustment Act and requiring agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (that is, originally enacted by Congress) or last adjusted other than pursuant to the Inflation Adjustment Act. In accordance with section 4 of the Inflation Adjustment Act, agencies were required to: (1) Adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rulemaking (IFR) to take effect by August 1, 2016; and (2) make subsequent annual adjustments for inflation.

In the September 2016 interim final rule, HHS adopted new regulations at 45 CFR part 102 to govern adjustment of civil monetary penalties for inflation. The regulation at 45 CFR 102.1 provides that part 102 applies to each statutory provision under the laws administered by the Department of Health and Human Services concerning civil monetary penalties, and that the regulations in part 102 supersede existing HHS regulations setting forth civil monetary penalty amounts. The civil money

penalties and the adjusted penalty amounts administered by all HHS agencies are listed in tabular form in 45 CFR 102.3. In addition to codifying the adjusted penalty amounts identified in § 102.3, the HHS-wide interim final rule included several technical conforming updates to certain agency-specific regulations, including various CMS regulations, to identify their updated information, and incorporate a cross-reference to the location of HHS-wide regulations.

Because the conforming changes to the Medicare provisions were part of a larger, omnibus departmental interim final rule, we inadvertently missed setting a target date for the final rule to make permanent the changes to the Medicare regulations in accordance with section 1871(a)(3)(A) of the Act and the procedures outlined in the December 2004 notice. Consistent with section 1871(a)(3)(C) of the Act, we are publishing this notice of continuation extending the effectiveness of the technical conforming changes to the Medicare regulations that were implemented through interim final rule and to allow time to publish a final rule. The extended time is needed to allow for coordination with the Department to issue a final rule and to avoid the potential for confusion between 45 CFR part 102, which establishes the civil monetary payment amounts, and the Medicare regulations subject to the timing requirements in section 1871(a)(3)(C) of the Act which would otherwise revert to the language that was used prior to the Inflation Adjustment Act. Therefore, the Medicare provisions adopted in interim final regulation continue in effect and the regular timeline for publication of the final rule is extended for an additional year, until September 6, 2020.

Dated: December 19, 2019.

**Ann C. Agnew,**

*Executive Secretary to the Department,  
Department of Health and Human Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**42 CFR Parts 403, 409, 410, 411, 414, 415, 416, 418, 424, 425, 489, and 498**

[CMS–1715–CN]

RIN 0938–AT72

**Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors in the final rule that appeared in the November 15, 2019 **Federal Register** entitled, “Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule” (referred to hereafter as the “CY 2020 PFS final rule”).

**DATES:** This correcting document is effective January 1, 2020.

**FOR FURTHER INFORMATION CONTACT:**  
Terri Plumb, (410) 786-4481, Gaysha Brooks, (410) 786-9649, or Annette Brewer (410) 786-6580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In FR Doc. 2019-24086 of November 15, 2019, the CY 2020 PFS final rule (84 FR 62568), there were technical errors that are identified and corrected in this correcting document. These corrections are effective and applicable beginning January 1, 2020.

**II. Summary of Errors**

*A. Summary of Errors in the Preamble*

On page 62568 of the CY 2020 PFS final rule, under **DATES**, we inadvertently omitted the applicability date for certain provisions, consistent with and as described in section II.P. of the final rule, Payment for Evaluation and Management Services.

On page 62699, we inadvertently included language that we intended to delete.

On page 62910, we inadvertently included the word “levels”.

On page 62932, we inadvertently stated incorrectly that the lone amendment to our regulation at § 424.535 was the addition of paragraph (a)(22).

On page 62972, third column, last paragraph, lines 20 through 21, we inadvertently omitted language.

On page 62973, first column, first paragraph, lines 4 through 7, we inadvertently included certain language and inadvertently omitted other language.

*B. Summary of Errors in Regulations Text*

On page 63185, we inadvertently omitted language in the amendatory instruction.

*C. Summary of Errors in the Addenda*

On page 63205, due to a typographical error, language was inadvertently omitted in the table title for Table Group A, the title is incorrect.

On page 63212, due to a typographical error, language was inadvertently omitted in the table title for Table Group AA, the title is incorrect.

On page 63438, the last sentence of Table D.12 contains a typographical error.

On page 63516, the Activity ID entry contains a typographical error.

On pages 63539 through 63563, Appendix 2 was inadvertently included twice.

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

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it. In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements.

This document merely corrects technical errors in the CY 2020 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2020 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this

document into the CY 2020 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

**IV. Correction of Errors**

In FR Doc. 2019-24086 (84 FR 62568), published November 15, 2019, make the following corrections:

*A. Correction of Errors in the Preamble*

1. On page 62568, in the second column, the first full paragraph is corrected to read:

**“DATES:**

*Effective date:* These regulations are effective on January 1, 2020.

*Applicability date:* The following provisions as described in section II.P. of this final rule, Payment for Evaluation and Management Services, are applicable beginning January 1, 2021: (1) Adoption of certain new coding, prefatory language, and interpretive guidance that has been approved by the American Medical Association/Common Procedural Terminology (AMA/CPT) Editorial Panel; (2) establishment of certain AMA Relative Value Scale Update Committee (RUC)-recommended work values for office/outpatient E/M visit codes; and (3) establishment and valuation of a single add-on code for visit complexity inherent to evaluation and management associated with medical care services that serve as the focal point for all needed health care services and/or with medical care services that are part of ongoing care related to a patient’s single, serious, or complex chronic condition.”

2. On page 62699, second column, under the heading, “7. Rural Health Clinics (RHCs) and Federally-Qualified Health Centers (FQHCs)”, first paragraph, lines 9 through 11, that reads “health services, and we are allowing G0511 to also be billed when the requirements for PCM are met.” is corrected to read “health services.”

3. On page 62910, third column, second full paragraph, line 6, that reads “(or payment models ~~levels~~ within a

track)” should read “(or payment models within a track)”.

4. On page 62932, second column, third full paragraph, lines 15 through 17, that reads “(a)(15); the lone amendment to § 424.535 is the addition of paragraph (a)(22).” is corrected to read “(a)(15); the only amendments to § 424.535 are our previously mentioned revision to paragraph (a)(14) and the addition of paragraph (a)(22).”.

5. On page 62972, third column, last paragraph, lines 20 through 21, that reads “Hospitalists, medical oncologists, and radiation specialties” is corrected to read “Hospitalists and radiation oncologists.”.

6. On page 62973, first column, first partial paragraph, lines 4 through 7, that reads “Other oncology specialties, including hematology oncology, medical oncology, gynecological oncology, and rheumatology” is corrected to read “Rheumatology and other oncology specialties, including hematology oncology, medical oncology, and gynecological oncology.”.

#### *B. Correction of Errors in the Regulatory Text*

##### **§ 403.902 [Corrected]**

■ 1. On page 63185, in the third column, amendatory instruction 2.b. is corrected to read “In the definition of “Covered recipient” by revising paragraph (1).

#### *C. Correction of Errors in the Addenda*

1. On page 63205, the title “TABLE Group A: New Quality Measures Finalized for the 2022 MIPS Payment Year and Future Years” is corrected to read: “TABLE Group A: New Quality Measures Finalized and Not Finalized for the 2022 MIPS Payment Year and Future Years”.

2. On page 63212, the title “TABLE Group AA: New Quality Measures Finalized for the 2023 MIPS Payment Year and Future Years” is corrected to read: “TABLE Group AA: New Quality Measure Not Finalized for the 2023 MIPS Payment Year and Future Years”.

3. On page 63438, the last sentence of Table D.12 is corrected by replacing “Q112” with “Q113”.

4. On page 63516, the Activity ID entry “IA\_CC\_18” is corrected to read “IA\_CC\_19”.

5. On pages 63539 through 63563, the second occurrence of Appendix 2 is removed.

Dated: December 19, 2019.

**Ann C. Agnew,**

*Executive Secretary to the Department,  
Department of Health and Human Services.*

[FR Doc. 2019-28005 Filed 12-30-19; 4:15 pm]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 243**

[Docket No. FRA-2019-0095, Notice No. 2]

RIN 2130-AC86

#### **Training, Qualification, and Oversight for Safety-Related Railroad Employees**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** In response to a petition for rulemaking, FRA is amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees by delaying the regulation’s implementation dates for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more.

**DATES:** This regulation is effective December 30, 2019.

**ADDRESSES:** For access to the docket to read background documents or submissions received, go to <http://www.regulations.gov> at any time or to Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Castiglione, Staff Director—Human Performance Division, Federal Railroad Administration, 4100 International Plaza, Suite 450, Fort Worth, TX 76109-4820 (telephone: 817-447-2715); or Alan H. Nagler, Senior Attorney, Federal Railroad Administration, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202-493-6038).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Executive Summary**

On November 7, 2014, FRA published a final rule (2014 Final Rule) that established minimum training standards for each category and subcategory of safety-related railroad employees and required railroad carriers, contractors, and subcontractors to submit training programs to FRA for approval. *See* 79 FR 66459. The 2014 Final Rule was required by section 401(a) of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110-432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary of Transportation delegated the authority to conduct this

rulemaking and implement the rule to the Federal Railroad Administrator. 49 CFR 1.89(b).

On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the American Short Line and Regional Railroad Association’s (ASLRRA) request to delay the implementation dates by an additional year.

On June 27 and July 12, 2019, ASLRRA and the National Railroad Construction and Maintenance Association, Inc. (NRC) (collectively Associations) filed petitions for rulemaking that were docketed in DOT’s Docket Management System as FRA-2019-0050. The Associations’ petitions request that FRA delay implementation and make several substantive changes to the part 243 regulation.

On November 22, 2019, FRA published a notice of proposed rulemaking (NPRM) describing the Associations’ petitions and responding to the request to delay implementation. 84 FR 64447. FRA proposed to delay the implementation dates in the rule for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. In the NPRM, FRA explained how its response is specifically targeted to equalize the implementation dates for those employers most likely to adopt model programs rather than develop their own programs. FRA also announced that it is considering whether to initiate a separate rulemaking which would be limited to amending FRA’s training regulation so that the regulatory text includes the latest guidance that is intended to help small entities and other users of model training programs. Although these two rulemakings would be separate, FRA explained in the NPRM that they would be complementary in that, without any changes to the implementation dates, the targeted employers might not understand that the regulation contains more flexibility than is commonly understood or they may not feel comfortable following the guidance believing there is regulatory uncertainty.

##### **II. Discussion of Comments and Conclusions**

FRA received six written comments in response to the NPRM. FRA did not receive a request for a public hearing and none was provided.

A comment was filed jointly by ASLRRA and NRC in support of