warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information


Thomas H. Boyd,
Acting Chair, Federal Subsistence Board.


Steve Kessler,
Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 03–31290 Filed 12–18–03; 8:45 am]

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL06

Reasonable Charges for Medical Care or Services; 2003 Methodology Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations concerning “reasonable charges” for medical care or services provided or furnished by VA to a veteran:

• For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

• For a nonservice-connected disability incurred to the veteran’s employment and covered under a worker’s compensation law or plan that provides reimbursement or indemnification for such care and services; or

• For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain methodologies designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document amends the regulations regarding VA’s reasonable charges methodologies for the following purposes: To establish charges for medical care, procedures, services, durable medical equipment (DME), drugs, injectables, medical items, and supplies for which we previously did not have charges; to replace certain charges previously based on VA costs with charges based on community charges; to establish separate charges for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges were previously combined with other charges; to bring our charge structures and associated billing practices closer to industry standard charge structures and billing practices; and to provide certain clarifications.

DATES: This final rule is effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT:
Stephanie Mardon, Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0362. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: In a proposed rule published in the Federal Register on October 2, 2003 (68 FR 56876), we proposed to amend VA’s medical regulations as summarized in this document and discussed in full in the proposed rule. We provided a comment period that ended on November 3, 2003. We received one comment to the proposed rule, which we are now adopting as a final rule with minor revisions based on the public comment, plus clarifications and minor technical changes.

The comment focused on the use of the term “medically directed” as it applies to VA charges for anesthesia services. The commenter pointed out that under the Medicare program, the term “medically directed” has specific meaning having to do with Medicare payments to anesthesiologists while providing anesthesia services. The commenter stated that Medicare and other primary insurers recognize the terms “personally performed” and “non-medically directed,” and recommended that these terms be used in the VA regulation. We appreciate this information, and we have revised paragraph (g) of the regulation to incorporate the recommended language.

The commenter also recommended that VA establish an “Anesthesia Reimbursement Working Group” to advise VA regarding methodology for determining professional charges and values for anesthesia services. Our response to this recommendation is that we believe our current methodology for determining professional charges and values for anesthesia services is appropriate, and that establishing the indicated working group is not necessary at this time.

In the proposed rule, we identified the Internet site of the Veterans Health Administration Chief Business Office as http://www.va.gov/revenue. In connection with ongoing improvements to this Internet site, the address has been changed to http://www.va.gov/cbo. We have made this change in the two places in the regulation in which it occurs, in paragraphs (a)(2) and (a)(3), indicating that this is the current address of this Internet site.
In the proposed rule, we defined “geographic area” to mean “a three-digit ZIP Code area.” We are now adding a clarification to that definition to indicate that the three-digit ZIP Codes referred to are the first three digits of standard U.S. Postal Service ZIP Codes.

Based on the rationale set forth in the proposed rule and in this document, we now adopt the proposed rule as a final rule with the minor revisions, clarifications, and minor technical changes indicated.

Previous Interim Final Rule

This document supersedes our previous interim final rule with comment period, “Reasonable Charges for Medical Care or Services; 2003 Update,” published in the Federal Register on April 29, 2003 (68 FR 22966, RIN 2900–AL57). The comment period ended on June 30, 2003. We did not receive any comments in response to the April 29, 2003, interim final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains provisions at 38 CFR 17.101(a)(4) constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) has approved the information collection requirements for §17.101(a)(4) under OMB control number 2900–0606.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects mainly large insurance companies, and where small entities are involved, they are not impacted significantly since most of their business is not with VA. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.


Anthony J. Principi
Secretary of Veterans Affairs.
information to substantiate the appropriateness of the payment amount (e.g., health plan or insurance policies, provider agreements, medical evidence, proof of payment to other providers in the same geographic area for the same care and services VA provided).

(5) Definitions. For purposes of this section:

APC means Medicare Ambulatory Payment Classification.

CMS means the Centers for Medicare and Medicaid Services.

CPT-`U` means Consumer Price Index—All Urban Consumers.

CPT code and CPT procedure code mean Current Procedural Terminology code, a five-digit identifier defined by the American Medical Association for a specified physician service or procedure.

DME means Durable Medical Equipment.

DRG means Diagnosis Related Group.

Geographic area means a three-digit ZIP Code area, where three-digit ZIP Code areas are the first three digits of a standard U.S. Postal Service ZIP Codes.

HCPCS code means a Healthcare Common Procedure Coding System Level II identifier, consisting of a letter followed by four digits, defined by CMS for a specified physician service, procedure, test, supply, or other medical service.

ICU means Intensive Care Unit, including coronary care units.

MDR means Medical Data Research, a medical charge database published by Ingenix, Inc.

MedPAR means the Medicare Provider Analysis and Review file.

Non-provider-based means a VA health care entity (such as a small VA community-based outpatient clinic) that functions as the equivalent of a doctor’s office or for other reasons does not meet CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges.

Provider-based means the outpatient department of a VA hospital or any other VA health care entity that meets CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges.

RVU means Relative Value Unit.

Unlisted procedures mean procedures, services, items, and supplies that have not been defined or specified by the American Medical Association or CMS, and the CPT and HCPCS codes used to report such procedures, services, items, and supplies.

(6) Provider-based and non-provider-based entities and charges. Each VA health care entity (medical center hospital, community-based outpatient clinic, independent outpatient clinic, etc.) is designated as either provider-based or non-provider-based. Provider-based entities are entitled to bill outpatient facility charges; non-provider-based entities are not. The charges for physician and other professional services provided at non-provider-based entities will be billed as professional charges only. Professional charges for both provider-based entities and non-provider-based entities are produced by the methodologies set forth in this section, with professional charges for provider-based entities based on facility practice expense RVUs, and professional charges for non-provider-based entities based on non-facility practice expense RVUs.

(7) Charges for medical care or services provided by non-VA providers at VA expense. When medical care or services are furnished at the expense of the VA by non-VA providers, the charges billed for such care or services will be the charges determined according to this section, or the amount VA paid to the non-VA provider.

(8) Charges for medical care or services for which VA does not have an established charge. When medical care or services are provided or furnished at VA expense by either VA or non-VA providers, and VA does not have an established charge for such care or services, then the charges billed for such care or services will be according to the first of the following subparagraphs that applies:

(i) In the event that a new identifier (DRG, CPT code, or HCPCS code) is assigned to a particular type or item of medical care or service, then until such time as VA establishes a charge for the new identifier, VA’s charge for such care or service will be VA’s most recent established charge for that type or item of medical care or service; otherwise,

(ii) In the event that the medical care or service is provided or furnished at VA expense by a non-VA provider, then VA’s charge for such care or service will be the amount VA paid to the non-VA provider; otherwise,

(iii) VA’s charges for prosthetic devices and durable medical equipment will be VA’s actual cost; otherwise,

(iv) If a Medicare allowed charge amount can be determined for the care or service, then VA’s charge will be the Medicare participating provider allowed charge amount geographically adjusted using the appropriate geographic area adjustment factors determined pursuant to this section; otherwise,

(v) If a charge cannot be established under paragraphs (a)(8)(i) through (iv) of this section, then VA will not charge for the care or service under this section.

(b) Acute inpatient facility charges. When VA provides or furnishes acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Acute inpatient facility charges consist of per diem charges for room and board and for ancillary services that vary by geographic area and by DRG. These charges are calculated as follows:

(1) Formula. For each acute inpatient stay, or portion thereof, for which a particular DRG assignment applies, the total acute inpatient facility charge is the sum of the applicable charges determined pursuant to paragraphs (b)(1)(i), (ii), and (iii) of this section. For purposes of this section, standard room and board days and ICU room and board days are mutually exclusive. VA will bill either a standard room and board per diem charge or an ICU room and board per diem charge, as applicable, for each day of a given acute inpatient stay.

(i) Standard room and board charges. Multiply the nationwide standard room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific standard room and board per diem charge. Multiply this amount by the number of days for which standard room and board charges apply to obtain the total acute inpatient facility standard room and board charge.

(ii) ICU room and board charges. Multiply the nationwide ICU room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ICU room and board per diem charge. Multiply this amount by the number of days for which ICU room and board per diem charges apply to obtain the total acute inpatient facility ICU room and board charge.

(iii) Ancillary charges. Multiply the nationwide ancillary per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ancillary per diem charge. Multiply this amount by the number of days of acute inpatient care to obtain the
Finally, the resulting amounts are each separated for each DRG, according to the number of days of care applicable for each DRG, and the total acute inpatient facility charge will be the sum of the total acute inpatient facility charges for the different DRGs.

(2) Per diem charges. To establish a baseline, two nationwide average per diem amounts for each DRG are calculated, one from the MedPAR file and one from the MedStat claims database, a database of nationwide commercial insurance claims. Average per diem charges are calculated based on all available charges, except for care reported for emergency room, ambulance, and observation care. These two data sources may report charges for two differing periods of time; when this occurs, the data source charges with the earlier center date are trended forward to the center date of the other data source, based on changes to the inpatient hospital services component of the CPI–U. Results obtained from these two data sources are then combined into a single weighted average per diem charge for each DRG. The resulting charge for each DRG is then separated into its two components, a room and board component and an ancillary component, with the per diem charge for each component calculated by multiplying the weighted average per diem charge by the corresponding percentage determined pursuant to paragraph (b)(2)(i) of this section. The room and board per diem charge is further differentiated into a standard room and board per diem charge and an ICU room and board per diem charge by multiplying the average room and board charge by the corresponding DRG-specific ratios determined pursuant to paragraph (b)(2)(ii) of this section. The resulting per diem charges for standard room and board, ICU room and board, and ancillary services for each DRG are then each multiplied by the final ratio determined pursuant to paragraph (b)(2)(iii) of this section to reflect the nationwide 80th percentile charges. Finally, the resulting amounts are each trended forward from the center date of the trended data sources to the effective time period for the charges, as set forth in paragraph (b)(2)(iv) of this section. The results constitute the nationwide 80th percentile standard room and board, ICU room and board, and ancillary per diem charges.

(i) Room and board charge and ancillary charge component percentages. Using only those cases from the MedPAR file for which a distinction between room and board charges and ancillary charges can be determined, the percentage of the total charges for room and board compared to the combined total charges for room and board and ancillary services, and the percentage of the total charges for ancillary services compared to the combined total charges for room and board and ancillary services, are calculated by DRG.

(ii) Standard room and board per diem charge and ICU room and board per diem charge ratios. Using only those cases from the MedPAR file for which a distinction between room and board and ancillary charges can be determined, overall average per diem room and board charges are calculated by DRG, as are ratios of ICU room and board per diem charge to average overall room and board per diem charges calculated by DRG, as are ratios of room and board per diem charge to average overall room and board per diem charges. Then, using the same cases, an average standard room and board per diem charge is calculated by dividing total non-ICU room and board charges by total non-ICU room and board days. Similarly, an average ICU room and board per diem charge is calculated by dividing total ICU room and board charges by total ICU room and board days. Finally, ratios of standard room and board per diem charges to average overall room and board per diem charges are calculated by DRG, as are ratios of ICU room and board per diem charges to average overall room and board per diem charges.

(iii) 80th percentile. Using cases from the MedPAR file with separately identifiable semi-private room rates, the ratio of the day-weighted 80th percentile semi-private room and board per diem charge to the average semi-private room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain a final 80th percentile ratio.

(iv) Trending forward. 80th percentile charges for each DRG, obtained as described in paragraph (b)(2) of this section, are trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the center date of the trended data sources through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the current year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. For each geographic area, the average per diem room and board charges and ancillary charges from the MedPAR file are calculated for each DRG. The DRGs are separated into two groups, surgical and non-surgical. For each of these groups of DRGs, for each geographic area, average room and board charges per diem charges and ancillary charges are calculated, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. This results in four average per diem charges for each geographic area: room and board for surgical DRGs, ancillary for surgical DRGs, room and board for non-surgical DRGs, and ancillary for non-surgical DRGs. Four corresponding national average per diem charges are obtained from the MedPAR file, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. Four geographic area adjustment factors are then calculated for each geographic area by dividing each geographic area average per diem charge by the corresponding national average per diem charge.

(c) Skilled nursing facility/sub-acute inpatient facility charges. When VA provides or furnishes skilled nursing/sub-acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, skilled nursing facility/sub-acute inpatient facility charges billed for such services will be determined in accordance with the provisions of this paragraph. The skilled nursing facility/sub-acute inpatient facility charges are per diem charges that vary by geographic area. The facility charges cover care, including room and board, nursing care, pharmaceuticals, supplies, and skilled rehabilitation services (e.g., physical therapy, inhalation therapy, occupational therapy, and speech-language pathology), that is provided in a nursing home or hospital inpatient setting, is provided under a physician’s orders, and is performed by or under the general supervision of professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech-language pathologists, and audiologists. These charges are calculated as follows:

(1) Formula. For each stay, multiply the nationwide per diem charge determined pursuant to paragraph (c)(2) of this section by the appropriate geographic area adjustment factor.
determined pursuant to paragraph (c)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total skilled nursing facility/sub-acute inpatient facility charge.

(2) Per diem charge. To establish a baseline, a nationwide average per diem billed charge is calculated based on charges reported in the MedPAR skilled nursing facility file. For this purpose, the following MedPAR charge categories are included: room and board (private, semi-private, and ward), physical therapy, occupational therapy, inhalation therapy, speech-language pathology, pharmacy, medical/surgical supplies, and “other” services. The following MedPAR charge categories are excluded from the calculation of the per diem charge and will be billed separately, using the charges determined as set forth in other applicable paragraphs of this section, when these services are provided to skilled nursing patients or sub-acute inpatients: ICU and CCI room and board, laboratory, radiology, cardiology, dialysis, operating room, blood and blood administration, ambulance, MRI, anesthesia, durable medical equipment, emergency room, clinic, outpatient, professional, lithotripsy, and organ acquisition services. The resulting average per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile per diem charge. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (c)(2)(ii) of this section.

(i) 80th percentile adjustment factor. Using the MedPAR skilled nursing facility file, the ratio of the day-weighted 80th percentile room and board per diem charge to the day-weighted average room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain the 80th percentile adjustment factor.

(ii) Trending forward. The 80th percentile charge is trended forward based on changes to the inpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charge, as described in paragraph (d)(2) of this section.

(3) Geographic area adjustment factors. The geographic area adjustment factors for partial hospitalization facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(e) Outpatient facility charges. When VA provides or furnishes outpatient services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. Partial hospitalization facility charges are per diem charges that vary by geographic area. These charges are calculated as follows:

(1) Formula. For each partial hospitalization stay, multiply the nationwide per diem charge determined pursuant to paragraph (d)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (d)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total partial hospitalization facility charge.

(2) Per diem charge. To establish a baseline, a nationwide median per diem billed charge is calculated based on charges associated with partial hospitalization from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. That median per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile per diem charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (d)(2)(ii) of this section.

(i) 80th percentile adjustment factor. The 80th percentile adjustment factor for partial hospitalization facility charges is the same as that computed for skilled nursing facility/sub-acute inpatient facility charges under paragraph (c)(2)(i) of this section.

(ii) Trending forward. The 80th percentile charge is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (d)(2) of this section.

(3) Geographic area adjustment factors. The geographic area adjustment factors for partial hospitalization facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(1) Settings and circumstances in which outpatient facility charges apply. Outpatient facility charges consist of facility charges for procedures, diagnostic tests, evaluation and management services, and other medical services, items, and supplies provided in the following settings and circumstances:

(i) VA outpatient departments and clinics at VA medical centers;

(ii) Other VA provider-based entities; and

(iii) VA non-provider-based entities, for procedures and tests for which no corresponding professional charge is established under the provisions of paragraph (f) of this section.

(2) Formula. For each outpatient facility charge CPT/HCPCS code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (e)(3) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (e)(4) of this section. The result constitutes the area-specific outpatient facility charge. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team, the outpatient facility charges for such procedures will be reduced as set forth in paragraph (e)(5) of this section.

(3) Nationwide 80th percentile charges. By CPT/HCPCS code. For each CPT/HCPCS code for which outpatient facility charges apply, the nationwide
80th percentile charge is calculated as set forth in either paragraph (e)(3)(i) or (e)(3)(ii) of this section. The resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section. The results constitute the nationwide 80th percentile outpatient facility charges by CPT/HCPCS code.

(i) Nationwide 80th percentile charges for CPT/HCPCS codes which have APC assignments. Using the outpatient facility charges reported in the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample, claim records are selected for which all charges can be assigned to an APC. Using this subset of the 5 percent Sample data, nationwide median charge to Medicare APC payment amount ratios, by APC, and nationwide 80th percentile to median charge ratios, by APC, are computed according to the methodology set forth in paragraphs (e)(3)(i)(A) and (e)(3)(i)(B) of this section, respectively. The product of these two ratios by APC is then computed, resulting in a composite nationwide 80th percentile charge to Medicare APC payment amount ratio. This ratio is then compared to the alternate nationwide 80th percentile charge to Medicare APC payment amount ratio computed in paragraph (e)(3)(ii)(C) of this section, and the lesser amount is selected and multiplied by the current Medicare APC payment amount. The resulting product is the APC-specific nationwide 80th percentile charge amount for each applicable CPT/HCPCS code.

(A) Nationwide median charge to Medicare APC payment amount ratios. For each CPT/HCPCS code, the ratio of median billed charge to Medicare APC payment amount is determined. The weighted average of these ratios for each APC is then obtained, using the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide 80th percentile to median charge ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(B) Nationwide 80th percentile to median charge ratios. For each CPT/HCPCS code, a geographically normalized nationwide 80th percentile billed charge amount is divided by a similarly normalized nationwide median billed charge amount. The weighted average of these ratios for each APC is then obtained, using the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide 80th percentile to median charge ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(C) Alternate nationwide 80th percentile charge to Medicare APC payment amount ratios. A minimum 80th percentile charge to Medicare APC payment amount ratio is set at 2.0 for APCs with Medicare APC payment amounts of $25 or less. A maximum 80th percentile charge to Medicare APC payment amount ratio is set at 6.5 for APCs with Medicare APC payment amounts of $10,000 or more. Using linear interpolation with these endpoints, the alternate APC-specific nationwide 80th percentile charge to Medicare APC payment amount ratio is then computed, based on the Medicare APC payment amount.

(D) APC categories for the purpose of establishing 80th percentile to median factors. For the purpose of the statistical methodology set forth in paragraph (e)(3)(i) of this section, APCs are assigned to the following APC categories:

(1) Radiology.
(2) Drugs.
(3) Office, Home, and Urgent Care Visits.
(4) Cardiovascular.
(5) Emergency Room Visits.
(6) Outpatient Psychiatry, Alcohol and Drug Abuse.
(7) Pathology.
(8) Surgery.
(9) Allergy Immunotherapy, Allergy Testing, Immunizations, and Therapeutic Injections.
(10) All APCs not assigned to any of the above groups.

(ii) Nationwide 80th percentile charges for CPT/HCPCS codes which do not have APC assignments. Nationwide 80th percentile billed charge levels by CPT/HCPCS code are computed from the outpatient facility component of the MDR database, from the MedStat claims database, and from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. If the MDR database contains sufficient data to provide a statistically credible 80th percentile charge, then that result is retained for this purpose. If the MDR database does not provide a statistically credible 80th percentile charge, then the result from the MedStat database is retained for this purpose, provided it is statistically credible. If neither the MDR nor the MedStat databases provide statistically credible results, then the nationwide 80th percentile billed charge computed from the 5 percent Sample data is retained for this purpose. The nationwide 80th percentile charges retained from each of these data sources are trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section.

(iii) Trending forward. The charges for each CPT/HCPCS code, obtained as described in paragraph (e)(3) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (e)(3)(iii) of this section.

(4) Geographic area adjustment factors. For each geographic area, a single adjustment factor is calculated as the arithmetic average of the outpatient geographic area adjustment factor published in the Milliman USA, Inc., Health Cost Guidelines (this factor constitutes the ratio of the level of charges for each geographic area to the nationwide level of charges), and a geographic area adjustment factor developed from the MDR database (see paragraph (a)(3) of this section for Data Sources). The MDR-based geographic area adjustment factors are calculated as the ratio of the CPT/HCPCS code weighted average charge level for each geographic area to the nationwide CPT/HCPCS code weighted average charge level.

(5) Multiple surgical procedures. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT/HCPCS procedure codes, then the
CPT/HCPCS procedure code with the highest facility charge will be billed at 100 percent of the charges established under this section; the CPT/HCPCS procedure code with the second highest facility charge will be billed at 25 percent of the charges established under this section; the CPT/HCPCS procedure code with the third highest facility charge will be billed at 15 percent of the charges established under this section; and no outpatient facility charges will be billed for any additional surgical procedures.

(i) Physician and other professional charges except for anesthesia services and certain dental services. When a VA provides or furnishes physician and other professional services, other than professional anesthesia services and certain professional dental services, within the scope of care referred to in paragraph (a)(1) of this section, physician and other professional charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional dental services identified by CPT code are determined in accordance with the provisions of this paragraph; charges for professional dental services identified by HCPCS Level II code are determined in accordance with the provisions of this paragraph; charges for professional dental services identified by HCPCS code determined pursuant to paragraph (f)(2)(i)(B) of this section equals the total geographically-adjusted RVUs.

(A) Geographically-adjusted work expense RVUs. For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule work expense RVUs are multiplied by the work expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted work expense RVUs.

(B) Geographically-adjusted practice expense RVUs. For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule practice expense RVUs are multiplied by the practice expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted practice expense RVUs.

(2) Geographically-adjusted 80th percentile conversion factors. CPT/HCPCS codes are statistically selected and weighted for representative CPT/HCPCS codes and are used to obtain geographically-adjusted practice expense RVUs for the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense in each geographic area.

(3) Geographically-adjusted 80th percentile conversion factors. CPT/HCPCS codes are statistically selected and weighted as follows for the following 23 CPT/HCPCS code groups: allergy immunotherapy, allergy testing, cardiovascular, chiropractor, consults, emergency room visits and observation care, hearing/speech exams, immunizations, inpatient visits, maternity/cesarean deliveries, maternity/non-deliveries, maternity normal deliveries, miscellaneous medical, office/home/urgent care visits, outpatient psychiatry/alcohol and drug abuse, pathology, physical exams, physical medicine, radiology, surgery, therapeutic injections, vision exams, and well baby exams. For each of the 23 CPT/HCPCS code groups, representative CPT/HCPCS codes are statistically selected and weighted as to give a weighted average RVU comparable to the weighted average RVU of the entire CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey); see paragraph (a)(3) of this section for Data Sources. The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount)
is calculated for each CPT/HCPCS code group as set forth in paragraph (f)(3)(i) of this section. The nationwide conversion factors for each of the 23 CPT/HCPCS code groups are trended forward to the effective time period for the charges, as set forth in paragraph (f)(3)(ii) of this section. The resulting amounts for each of the 23 groups are multiplied by geographic area adjustment factors determined pursuant to paragraph (f)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the 23 CPT/HCPCS code groups for the effective charge period.

(i) Nationwide conversion factors. Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section, a nationwide conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average RVU.

(ii) Trended forward. The nationwide conversion factors for each of the 23 CPT/HCPCS code groups, obtained as described in paragraph (f)(3)(i) of this section, are trended forward based on changes to the physicians’ services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year. Charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 23 conversion factors.

(iii) Geographic area adjustment factors. Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (f)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting conversion factor for each geographic area for each of the 23 CPT/HCPCS code groups is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (f)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for the conversion factors for each of the 23 CPT/HCPCS code groups for each geographic area.

(4) Charge adjustment factors for specified HCPCS code modifiers. Surcharges or charge discounts are calculated in the following manner:

from the Part B component of the Medicare Standard Analytical File 5 percent Sample, the ratio of weighted average billed charges for CPT/HCPCS codes with the specified modifier to the weighted average billed charge for CPT/HCPCS codes with no charge modifier is calculated, using the frequency of procedure codes with the modifier as weights in both weighted average calculations. The resulting ratios constitute the surcharge or discount factors for specified charge-significant CPT/HCPCS code modifiers.

(5) Certain charges for providers other than physicians. When services for which charges are established according to the preceding provisions of this paragraph (f) are performed by providers other than physicians, the charges for those services will be as determined by the preceding provisions of this paragraph, except as follows:

(i) Outpatient facility charges. When the services of providers other than physicians are furnished in outpatient facility settings or in other facilities designated as provider-based, and outpatient facility charges for those services have been established under paragraph (e) of this section, then the outpatient facility charges established under paragraph (e) will apply instead of the charges established under this paragraph (f).

(ii) Discounted charges. Charges for the professional services of the following providers will be the indicated percentages of the amount that would have been charged if the care had been provided by a physician:

(A) Nurse practitioner: 85 percent.
(B) Clinical nurse specialist: 85 percent.
(C) Physician Assistant: 85 percent.
(D) Clinical psychologist: 80 percent.
(E) Clinical social worker: 75 percent.
(F) Dietitian: 75 percent.
(G) Clinical pharmacist: 80 percent.

(6) Professional charges for anesthesia services. When VA provides or furnishes professional anesthesia services within the scope of care referred to in paragraph (a)(1) of this section, professional anesthesia charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional anesthesia services personally performed by anesthesiologists will be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by medically directed certified registered nurse anesthetists will be 50 percent of the charges otherwise determined as set forth in this paragraph. Professional anesthesia charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code base units, and by number of time units. These charges are calculated as follows:

(1) Formula. For each anesthesia CPT/HCPCS code, multiply the total anesthesia RVUs determined pursuant to paragraph (g)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (g)(3) of this section to obtain the professional anesthesia charge for each CPT/HCPCS code in a particular geographic area.

(2) Total RVUs for professional anesthesia services. The total anesthesia RVUs for each anesthesia CPT/HCPCS code are the sum of the base units (as compiled by CMS) for that CPT/HCPCS code and the number of time units reported for the anesthesia service, where one time unit equals 15 minutes. For anesthesia CPT/HCPCS codes designated as unlisted procedures, base units are developed based on the weighted median base units for anesthesia CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median base units.

(3) Geographically-adjusted 80th percentile conversion factors. A nationwide 80th percentile conversion factor is calculated according to the methodology set forth in paragraph (g)(3)(i) of this section. The nationwide conversion factor is then trended forward to the effective time period for the charges, as set forth in paragraph (g)(3)(ii) of this section. The resulting amount is multiplied by geographic area adjustment factors determined pursuant to paragraph (g)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the effective charge period.

(i) Nationwide conversion factor. Preliminary 80th percentile conversion factors for each area are compiled from the MDR database. Then, a preliminary nationwide weighted-average 80th percentile conversion factor is calculated, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources). A nationwide VA conversion factor is then computed by multiplying this
conversion factor by the MDR base units for each CPT/HCPCS code. An adjusted 80th percentile conversion factor by CPT/HCPCS code is then calculated by dividing the nationwide 80th percentile fee for each procedure code by the anesthesia base units (as compiled by CMS) for that CPT/HCPCS code. Finally, a nationwide weighted average 80th percentile conversion factor is calculated using combined frequencies for billed base units and time units from the part B component of the Medicare Standard Analytical File 5 percent Sample as weights.

(ii) Trending forward. The nationwide conversion factor, obtained as described in paragraph (g)(3)(i) of this section, is trended forward based on changes to the CPI–U. Actual CPI–U changes are used from the time period of the data source through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the conversion factor.

(iii) Geographic area adjustment factors. The preliminary 80th percentile conversion factors for each geographic area described in paragraph (g)(3)(i) of this section are divided by the corresponding preliminary nationwide 80th percentile conversion factor also described in paragraph (g)(3)(i). The resulting ratios are the adjustment factors for each geographic area.

(h) Professional charges for dental services identified by HCPCS Level II codes. When VA provides or furnishes outpatient dental professional services within the scope of care referred to in paragraph (a)(1) of this section, and such services are identified by HCPCS code rather than CPT code, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for dental services vary by geographic area and by HCPCS code. These charges are calculated as follows:

(1) Formula. For each HCPCS dental code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (h)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (h)(3) of this section. The result constitutes the area-specific dental charge.

(2) Nationwide 80th percentile charges by HCPCS code. For each HCPCS dental code, 80th percentile charges are extracted from three independent data sources: Prevailing Healthcare Charges System database; National Dental Advisory Service nationwide pricing index; and the Dental UCR Module of the Comprehensive Healthcare Payment System, a release from Ingenix from a nationwide database of dental charges (see paragraph (a)(3) of this section for Data Sources). Charges for each database are then trended forward to a common date, based on actual changes to the dental services component of the CPI–U. Charges for each HCPCS dental code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (h)(2)(i) of this section. HCPCS dental codes designated as unlisted are assigned 80th percentile charges by means of the methodology set forth in paragraph (h)(2)(ii) of this section. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (h)(2)(iii) of this section. The results constitute the nationwide 80th percentile charge for each HCPCS dental code.

(i) Averaging methodology. The average charge for any particular HCPCS dental code is calculated by first computing a preliminary mean average of the three charges for each code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 50 percent of the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 50 percent of the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(ii) Nationwide 80th percentile charges for HCPCS dental codes designated as unlisted procedures. For HCPCS dental codes designated as unlisted procedures, 80th percentile charges are developed based on the weighted median 80th percentile charge of HCPCS dental codes within the series in which the unlisted procedure code occurs. The distribution of procedures and services from the Prevailing Healthcare Charges System nationwide commercial insurance database is used for the purpose of computing the weighted median.

(iii) Trending forward. 80th percentile charges for each dental procedure code, obtained as described in paragraph (h)(2) of this section, are trended forward based on the dental services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. A geographic adjustment factor (consisting of the ratio of the level of charges in a given geographic area to the nationwide level of charges) for each geographic area and dental class of service is obtained from Milliman USA, Inc., Dental Health Cost Guidelines, a database of nationwide commercial insurance charges and relative costs; and a normalized geographic adjustment factor computed from the Dental UCR Module of the Comprehensive Healthcare Payment System compiled by Ingenix, as follows: Using local and nationwide average charges reported in the Ingenix data, a local weighted average charge for each dental class of procedure codes is calculated using utilization frequencies from the Milliman USA, Inc., Dental Health Cost Guidelines as weights (see paragraph (a)(3) of this section for Data Sources). Similarly, using nationwide average charge levels, a nationwide average charge by dental class of procedure codes is calculated. The normalized geographic adjustment factor for each dental class of procedure codes and for each geographic area is the ratio of the local average charge divided by the corresponding nationwide average charge. Finally, the geographic area adjustment factor is the arithmetic average of the corresponding factors from the data sources mentioned in the first sentence of this paragraph (h)(3).

(i) Pathology and laboratory charges. When VA provides or furnishes pathology and laboratory services within the scope of care referred to in paragraph (a)(1) of this section, charges billed for such services will be determined in accordance with the provisions of this paragraph. Pathology and laboratory charges consist of charges for services that vary by geographic area and by CPT/HCPCS code. These charges are calculated as follows:

(1) Formula. For each CPT/HCPCS code, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (i)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (i)(3)
of this section to obtain the pathology/ 
laboratory charge for each CPT/HCPCS 
code in a particular geographic area.
(ii) Total geographically-adjusted 
RVUs for pathology and laboratory 
services that have Medicare-based 
RVUs. Total RVUs are developed based 
on the Medicare Clinical Diagnostic 
Laboratory Fee Schedule (CLAB). The 
CLAB payment amounts are upwardly 
adjusted such that the adjusted payment 
amounts are, on average, equivalent to 
Medicare Physician Fee Schedule 
payment levels, using statistical 
comparisons to the 80th percentile 
derived from the MDR database. These 
adjusted payment amounts are then 
divided by the corresponding Medicare 
conversion factor to derive RVUs for 
each CPT/HCPCS code. The resulting 
nationwide total RVUs are multiplied by 
the geographic adjustment factors 
determined pursuant to paragraph (i)(2)(iv) 
of this section to obtain the area-specific 
total RVUs.

(iii) RVUs for CPT/HCPCS codes 
designated as unlisted procedures. For 
CPT/HCPCS codes designated as 
unlisted procedures, total RVUs are 
developed based on the weighted 
median of the total RVUs of CPT/HCPCS 
codes within the series in which the 
unlisted procedure code occurs. A 
nationwide VA distribution of 
procedures and services is used for the 
purpose of computing the weighted 
median. The resulting nationwide total 
RVUs are multiplied by the geographic 
area adjustment factors determined 
pursuant to paragraph (i)(2)(iv) of this 
section to obtain the area-specific total 
RVUs.

(iv) RVU geographic area adjustment 
factors for CPT/HCPCS codes that 
do not have Medicare-based RVUs, 
including codes that are designated as unlisted 
procedures. The adjustment factor for 
each geographic area consists of the 
weighted average of the work expense 
and practice expense Medicare 
Geographic Practice Cost Indices for 
each geographic area using charge data 
for representative CPT/HCPCS codes 
statistically selected and weighted for 
work expense and practice expense.

(3) Geographically-adjusted 80th 
percentile conversion factors. 
Representative CPT/HCPCS codes are 
statistically selected and weighted so as 
to give a weighted average RVU 
comparable to the weighted average 
RVU of the entire pathology/laboratory 
CPT/HCPCS code group (the selected 
CPT/HCPCS codes are set forth in the 
Milliman USA, Inc., Health Cost 
Guidelines fee survey). The 80th 
percentile charge for each selected CPT/
HCPCS code is obtained from the MDR 
database. A nationwide conversion 
factor (a monetary amount) is calculated 
as set forth in paragraph (i)(3)(i) of 
this section. The nationwide conversion 
factor is trended forward to the effective 
time period for the charges, as set forth 
in paragraph (i)(3)(ii) of this section. 
The resulting amount is multiplied by a 
geographic area adjustment factor 
determined pursuant to paragraph 
(i)(3)(iv) of this section, resulting in the 
geographically-adjusted 80th percentile 
conversion factor for the effective 
charge period.

(i) Nationwide conversion factors. 
Using the nationwide 80th percentile 
charges for the selected CPT/HCPCS 
codes from paragraph (i)(3) of this 
section, a nationwide conversion factor 
is calculated by dividing the weighted 
average charge by the weighted average 
RVU.

(ii) Trending forward. The nationwide 
conversion factor, obtained as described 
in paragraph (i)(3) of this section, is 
trended forward based on changes to the 
physicians’ services component of the 
CPI-U. Actual CPI-U changes are used 
from the time period of the source data 
through the latest available month as of 
the time the calculations are performed. 
The three-month average annual trend 
rate as of the latest available month is 
then held constant to the midpoint of 
the calendar year in which the charges 
are primarily expected to be used. The 
projected total CPI–U change so 
obtained is then applied to the 
pathology/laboratory conversion factor.

(iii) Geographic area adjustment 
factor. Using the 80th percentile charges 
for the selected CPT/HCPCS codes from 
paragraph (i)(3) of this section for each 
geographic area, a geographic area-
specific conversion factor is calculated 
by dividing the weighted average charge 
by the weighted average geographically-
adjusted RVU. The resulting geographic 
area conversion factor is divided by the 
corresponding nationwide conversion 
factor determined pursuant to paragraph 
(i)(3)(i) of this section. The resulting 
ratios are the geographic area 
adjustment factors for pathology and 
laboratory services for each geographic 
area.

(j) Observation care facility charges. 
When VA provides observation care 
within the scope of care referred to in 
paragraph (a)(1) of this section, the 
facility charges billed for such care will 
be determined in accordance with the 
provisions of this paragraph. The 
charges for this care vary by geographic 
area and number of hours of care. These 
charges are calculated as follows:

(1) Formula. For each occurrence of 
observation care, add the nationwide 
base charge determined pursuant to 
paragraph (j)(2) of this section to the 
product of the number of hours in 
observation care and the hourly charge 
also determined pursuant to paragraph 
(j)(2) of this section. Then multiply 
this amount by the appropriate geographic 
area adjustment factor determined 
pursuant to paragraph (j)(3) of this 
section. The result constitutes the area-
specific observation care facility charge. 

(2) Nationwide 80th percentile 
observation care facility charges. To 
calculate nationwide base and hourly 
facility charges, all claims with 
observation care line items are selected 
from the outpatient facility component 
of the Medicare Standard Analytical 
File 5 percent Sample. Then, using the 
80th percentile observation line item 
charges for each unique hourly length of 
stay, a standard linear regression 
technique is used to calculate the 
nationwide 80th percentile base charge 
and 80th percentile hourly charge. 
Finally, the resulting amounts are each 
trended forward to the effective time
period for the charges, as set forth in paragraph (j)(2)(ii) of this section. The results constitute the nationwide 80th percentile base and hourly facility charges for observation care.

(ii) Trending forward. The nationwide 80th percentile base and hourly facility charges for observation care, obtained as described in paragraph (j)(2)(i) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. The geographic area adjustment factor for observation care facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(k) Ambulance and other emergency transportation charges. When VA provides ambulance and other emergency transportation services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for these services vary by HCPCS code, length of trip, and geographic area. These charges are calculated as follows:

(1) Formula. For each occasion of ambulance or other emergency transportation service, add the nationwide base charge for the appropriate HCPCS code determined pursuant to paragraph (k)(2)(i) of this section to the product of the number of miles traveled and the appropriate HCPCS code mileage charge determined pursuant to paragraph (k)(2)(ii) of this section. Then, for each HCPCS code, using miles as weights, is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile mileage charge for each HCPCS code.

(iii) Trending forward. The nationwide 80th percentile charge for each HCPCS code, obtained as described in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, is trended forward based on changes to the outpatient hospital services component of the CPI–U. Actual CPI–U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. The geographic area adjustment factors for ambulance and other emergency transportation charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(i) Charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies. For the purpose of the statistical methodology set forth in paragraph (l)(2)(ii) of this section, HCPCS codes are assigned to the following HCPCS code groups. For the HCPCS codes in each group, the RVUs or amounts indicated constitute the RVUs:

(A) Chemotherapy Drugs: Ingenix/St. Anthony’s RBRVS Practice Expense RVUs.

(B) Other Drugs: Ingenix/St. Anthony’s RBRVS Practice Expense RVUs.

(C) DME—Hospital Beds: Medicare DME Fee Schedule amounts.

(D) DME—Medical/Surgical Supplies: Medicare DME Fee Schedule amounts.

(E) DME—Orthotic Devices: Medicare DME Fee Schedule amounts.

(F) DME—Oxygen and Supplies: Medicare DME Fee Schedule amounts.

(G) DME—Wheelchairs: Medicare DME Fee Schedule amounts.
(H) Other DME: Medicare DME Fee Schedule amounts.
(I) Enteral/Parenteral Supplies: Medicare Parenteral and Enteral Nutrition Fee Schedule amounts.
(J) Surgical Dressings and Supplies: Medicare DME Fee Schedule amounts.
(K) Vision Items—Other Than Lenses: Medicare DME Fee Schedule amounts.
(L) Vision Items—Lenses: Medicare DME Fee Schedule amounts.
(M) Hearing Items: Ingenix/St. Anthony’s RBRVS Practice Expense RVUs.

(ii) Charge amounts. Using combined Part B and DME components of the Medicare Standard Analytical File 5% Sample, the median billed charge is calculated for each HCPCS code. A mathematical approximation methodology based on least squares techniques is applied to the RVUs specified for each of the groups set forth in paragraph (l)(2)(i) of this section, yielding two charge amounts for each HCPCS code group: a charge amount per incremental RVU, and a fixed charge amount.

(iii) 80th Percentile to median charge ratios. Two ratios are obtained for each HCPCS code group set forth in paragraph (l)(2)(i) of this section by dividing the weighted average 80th percentile charge by the weighted average median charge derived from two data sources: Medicare data, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample; and the MDR database. Charge frequencies from the Medicare data are used as weights when calculating all weighted averages. For each HCPCS code group, the smaller of the two ratios is selected as the adjustment from median to 80th percentile charges.

(iv) Trending forward. The charges for each HCPCS code, obtained as described in paragraph (l)(2)(iii) of this section, are trended forward based on changes to the CPI–U Actual CPI–U changes are used from the time period of the source database through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(3) of this section.

(ii) Averaging methodology. The average 80th percentile trended charge for any particular HCPCS code is calculated by first computing a preliminary mean average of the three charges for each HCPCS code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 5 times the preliminary mean charge, or by less than 0.2 times the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 5 times the preliminary mean charge, or less than 0.2 times the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(4) Nationwide 80th percentile charges for HCPCS codes without RVUs. For each applicable HCPCS code, 80th percentile charges are extracted from three independent data sources: the MDR database; Medicare, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample; and Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets (see paragraph (a)(3) of this section for Data Sources). Charges from each database are then trended forward to the effective time period for the charges, as set forth in paragraph (l)(3)(i) of this section. Charges for each HCPCS code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (l)(3)(ii) of this section. The results constitute the nationwide 80th percentile charge for each applicable HCPCS code.

(i) Trending forward. The charges from each database for each HCPCS code, obtained as described in paragraph (l)(3) of this section, are trended forward based on changes to the medical care commodities component of the CPI–U Actual CPI–U changes are used from the time period of each source database through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI–U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(3) of this section.

(ii) Averaging methodology. The average 80th percentile trended charge for any particular HCPCS code is calculated by first computing a preliminary mean average of the three charges for each HCPCS code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 5 times the preliminary mean charge, or by less than 0.2 times the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 5 times the preliminary mean charge, or less than 0.2 times the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(5) Geographic area adjustment factors. For the purpose of geographic adjustment, HCPCS codes are combined into two groups: drugs and DME/supplies, as set forth in paragraph (l)(5)(i) of this section. The geographic area adjustment factor for each of these groups is calculated as the ratio of the area-specific weighted average charge determined pursuant to paragraph (l)(5)(ii) of this section divided by the nationwide weighted average charge determined pursuant to paragraph (l)(5)(iii) of this section.

(i) Combined HCPCS code groups for geographic area adjustment factors for DME, drugs, injectables, and other medical services, items, and supplies. For the purpose of the statistical methodology set forth in paragraph (l)(5) of this section, each of the HCPCS code groups set forth in paragraph (l)(5)(i) of this section is assigned to one of two combined HCPCS code groups, as follows:

(A) Chemotherapy Drugs: Drugs.
(B) Other Drugs: Drugs.
(C) DME—Hospital Beds: DME/supplies.
(D) DME—Medical/Surgical Supplies: DME/supplies.
(E) DME—Orthotic Devices: DME/supplies.
(F) DME—Oxygen and Supplies: DME/supplies.
(G) DME—Wheelchairs: DME/supplies.
(H) Other DME: DME/supplies.
(I) Enteral/Parenteral Supplies: DME/supplies.
(J) Surgical Dressings and Supplies: DME/supplies.
(K) Vision Items—Other Than Lenses: DME/supplies.
(L) Vision Items—Lenses: DME/supplies.
(M) Hearing Items: DME/supplies.

(ii) Area-specific weighted average charges. Using the median charges by HCPCS code from the MDR database for each geographic area and utilization frequencies by HCPCS code from the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample, an area-specific weighted average charge is calculated for each combined HCPCS code group.

(iii) Nationwide weighted average charges. Using the area-specific weighted average charges determined
pursuant to paragraph (l)(5)(ii) of this section, a nationwide weighted average charge is calculated for each combined HCPCS code group, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources).

(m) Charges for prescription drugs not administered during treatment. Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0606.)

Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1712, 1722, 1729.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[CARB–106–DELA; FRL–7600–5]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants in California. Several local air pollution control agencies in California have requested delegation of these Federal standards as they apply to non-major sources. The purpose of this action is to approve those delegation requests and update the listing in the Code of Federal Regulations.

DATES: This rule is effective on February 17, 2004, without further notice, unless EPA receives relevant adverse comments by January 20, 2004. If EPA receives such comments, then it will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to steckel.andrew@epa.gov, or submit comments at http://www.regulations.gov. Copies of the requests for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the Region IX office during normal business hours by appointment. Copies are also available at: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 947–4124, wang.mae@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to State or local air pollution control agencies the authority to implement and enforce the standards set out in title 40 of the Code of Federal Regulations (40 CFR), part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as “subpart E”), establishing procedures for EPA’s approval of State rules or programs under section 112(l) (see 58 FR 62262). Subpart E was later amended on September 14, 2000 (see 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a State or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program. On July 6, 1995, the California Air Resources Board (CARB) submitted a demonstration that California has adequate authorities and resources to implement and enforce Clean Air Act section 112 programs and rules. This demonstration was approved on May 21, 1996 (61 FR 25397).

B. California Delegations

While each local air pollution control agency in California (district) has an approved program for receiving delegation of any CAA section 112 standards as promulgated, California districts currently have delegation only for standards that apply to major sources. As part of EPA’s approval of each district’s Title V operating permits program, districts received delegation of unchanged federal section 112 standards for Title V sources. This delegation did not extend to sources not covered by the California Title V program submittals. Therefore, California needed to make a separate voluntary request for delegation of any section 112 standards that apply to sources not covered by district Title V programs (area sources).

C. Area Source Delegation Requests

On October 6, 2003, CARB submitted on behalf of nine California districts a request for delegation of all Federal section 112 standards that apply to area sources, with the exception of the dry cleaning and chromium electroplating standards for which State or local rules have already been approved (see 61 FR 25397 and 64 FR 12762). Upon the effective date of this delegation, these districts will have authority to implement and enforce existing area source standards unchanged as promulgated by EPA. Additionally, each of these nine districts will receive delegation of any future area source standards or revisions 90 days after promulgation of these standards or revisions, unless the district chooses to decline delegation of a particular future standard by notifying the EPA Region IX office in writing. If no such notification is received, the delegation will go into effect 90 days after promulgation of the standard or revision, without any additional action from the district or EPA.

CARB’s October 6, 2003, request was submitted on behalf of the following nine districts in California: Antelope Valley Air Quality Management District, Butte County Air Quality Management District, Kern County Air Pollution Control District, Mendocino County Air Quality Management District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, Ventura County Air Pollution Control...