

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Part 412**

[CMS-1781-CN]

RIN 0938-AV04

**Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2024 and Updates to the IRF Quality Reporting Program; Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical and typographical errors in the final rule that appeared in the August 2, 2023 **Federal Register** entitled “Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2024 and Updates to the IRF Quality Reporting Program” (referred to hereafter as the “FY 2024 IRF final rule”). The effective date of the FY 2024 IRF final rule is October 1, 2023.

**DATES:** This document is effective October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Heidi Oumarou, (410) 786-7942 and Bridget Dickensheets, (410) 786-8670, for the percentage of hospital compensation hours correction.

Ariel Cress, (410) 786-8571, for the IRF quality reporting program corrections.

Kia Burwell, (410) 786-7816 and Catie Cooksey, (410) 786-0179 for wage index corrections.

**SUPPLEMENTARY INFORMATION:****I. Background**

In FR Doc. 2023-16050 of August 2, 2023, the FY 2024 IRF final rule (88 FR 50956), there were technical and typographical errors that are identified and corrected in this correcting document. These corrections are effective as if they had been included in the FY 2024 IRF final rule. Accordingly, the corrections are effective October 1, 2023.

**II. Summary of Errors***A. Summary of Errors in the Preamble*

On page 50978, we made a typographical error in the estimated percentage that hospital workers' hours represent of total compensation hours.

On pages 51017, 51020, and 51025 we inadvertently made technical errors in measure names.

On page 51040, we made a typographical error in identifying the calendar year.

On page 51048, we made a technical error in the Total Percent Change for the Rural South Atlantic region in Table 21.

*B. Summary of Errors and Corrections Posted on the CMS Website for the IRF Wage Index*

As discussed in the FY 2024 IRF PPS final rule (88 FR 50988 through 50989), in developing the wage index to be applied to IRFs under the IRF PPS, we use the updated, pre-reclassified, pre-rural floor hospital inpatient PPS (IPPS) wage data, exclusive of the occupational mix adjustment. For FY 2024, the updated, unadjusted, pre-reclassified, pre-rural floor IPPS wage data used under the IRF PPS are for cost reporting periods beginning on or after October 1, 2019, and before October 1, 2020 (FY 2020 cost report data), as discussed in the final rule entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2024 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Rural Emergency Hospital and Physician-Owned Hospital Requirements; and Provider and Supplier Disclosure of Ownership; and Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated with Section 1115 Demonstrations in the Medicaid Fraction” (88 FR 58640) (hereinafter referred to as the FY 2024 IPPS final rule). In calculating the wage index under the FY 2024 IPPS final rule, we made an inadvertent error related to the calculation of the wage index. This error is identified, discussed, and corrected in the document entitled “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2024 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Rural Emergency Hospital and Physician-Owned Hospital Requirements; and Provider and Supplier Disclosure of Ownership; and Medicare Disproportionate Share Hospital (DSH) Payments: Counting Certain Days Associated with Section

1115 Demonstrations in the Medicaid Fraction; Correction,” published elsewhere in this issue of the **Federal Register**. The error that affects the unadjusted, pre-reclassified, pre-rural floor IPPS wage data and thereby affects the IRF PPS wage data was an error in the wage data collected from the Medicare cost reports of one hospital (CMS Certification Number (CCN) 340064—Core-Based Statistical Area (CBSA) 34 rural North Carolina). Given this error, we are republishing the wage indexes in Tables A and B accordingly on the CMS website at <https://www.cms.gov/medicare/medicare-fee-for-service-payment/inpatientrehabfacpps>.

Thus, the use of the corrected wage data for the one hospital in CBSA 34 required the recalculation of the final FY 2024 IRF PPS wage indexes. Additionally, as discussed in the FY 2024 IRF PPS final rule adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Social Security Act must be made in a budget-neutral manner. Due to the recalculation and subsequent revision of the final FY 2024 IRF PPS wage indexes, it was necessary to recalculate the FY 2024 IRF PPS wage index budget neutrality factor as well with no subsequent changes noted. Due to the recalculated wage indexes, we recalculated the impact analysis provided in Table 21 of the FY 2024 IRF PPS final rule (88 FR 51047 through 51049). The correction to this error is found in section IV. of this document.

We are correcting the wage index in Table B setting forth the wage indexes for rural areas based on CBSA labor market areas (Table B), which is available exclusively on the CMS website at <https://www.cms.gov/medicare/medicare-fee-for-service-payment/inpatientrehabfacpps>. Table B has been updated to reflect the error discussed in this correcting document, and we are republishing the wage indexes in Tables A and B accordingly on the CMS website at <https://www.cms.gov/medicare/medicare-fee-for-service-payment/inpatientrehabfacpps>.

**III. Waiver of Proposed Rulemaking**

Under section 553(b) of the Administrative Procedure Act (the APA) (5 U.S.C. 553(b)), the agency is required to publish a notice of proposed rulemaking 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) of the Act allow the agency to avoid the 30-day delay in effective date where the agency finds that 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 FY 2024 IRF 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 FY 2024 IRF 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 FY 2024 IRF 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 the Preamble

In FR Doc. 2023–16050 of August 2, 2023 (88 FR 50956), make the following corrections:

1. On page 50978, second column, last full paragraph, line 28, the percentage that reads “97 percent” is corrected to read “96 percent”.

2. On page 51017, second column, first full paragraph:

a. Line 29, the measure name that reads “Discharge in Mobility Score” is corrected to read “Discharge Mobility Score”.

b. Line 30, the measure name that reads “Discharge in Self-Care Score” is corrected to read “Discharge Self-Care Score”.

3. On page 51020, third column, second full paragraph:

a. Lines 25 and 26, the measure name that reads “Discharge in Mobility Score” is corrected to read “Discharge Mobility Score”.

b. Line 26, the measure name that reads “Discharge in Self-Care Score” is corrected to read “Discharge Self-Care Score”.

4. On page 51025, second column, first partial paragraph:

a. Lines 3 and 4, the measure name that reads “Discharge in Mobility Score” is corrected to read “Discharge Mobility Score”.

b. Line 14, the measure name that reads “Discharge in Mobility Score” is corrected to read “Discharge Mobility Score”.

5. On page 51040, third column, second to last full paragraph, line 9, the public display date of the Transfer of Health (TOH) Information to the Provider and TOH Information to the Patient measure that reads “September 2025” is corrected to read “September 2024”.

6. On page 51048, Table 21 “titled “IRF Impact for FY 2024 (Columns 4 through 7 in percentage)”, row 29, column 7, the Total Percent change that reads “3.9” is corrected to read “4.0”.

#### Wilma Robinson,

*Deputy Executive Secretary, Department of Health and Human Services.*

[FR Doc. 2023–22051 Filed 9–29–23; 4:15 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 230427–0115; RTID 0648–XD439]

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; 2023 Recreational Harvest Closure for Gag

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for the recreational harvest of gag in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2023 fishing year. NMFS has projected that the 2023 recreational annual catch limit (ACL) for gag will be reached by October 19, 2023. Therefore, NMFS closes the recreational sector for gag to protect the gag resource.

**DATES:** This temporary rule is effective from 12:01 a.m. local time on October 19, 2023, through December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Dan Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: [daniel.luers@noaa.gov](mailto:daniel.luers@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the Gulf reef fish fishery and gag under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All weights described in this temporary rule are in gutted weight.

On May 3, 2023, NMFS implemented a final temporary rule for gag in the Gulf EEZ (88 FR 27701, May 3, 2023). That 2023 temporary rule resulted from a 2021 gag stock assessment and determination that the stock is overfished and is undergoing overfishing, and a subsequent request from the Council for NMFS to implement interim measures gag during the 2023 fishing year. The purpose of the requested interim measures and the 2023 temporary rule was to reduce overfishing of gag while long-term management measures are developed in Amendment 56 to the FMP. The