

Dated: November 20, 1995.
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Medicare Program; Notice Containing the Statement Drafted by the Committee Established to Negotiate the Wage Index to be Used to Adjust Hospice Payment Rates Under Medicare

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice provides the statement signed on April 13, 1995, by the Negotiating Committee on the Hospice Wage Index, concerning the index to be used to adjust Medicare payment rates for hospice services to reflect geographic differences in wages. The statement represents a consensus by the committee members, who represent different interests affected by the hospice rules.

The notice also announces that a proposed rule establishing the revised hospice wage index, with a description of the methodology used to calculate the index, will be published in the spring of 1996. A new wage index is needed because the index currently applied is based on 1981 wage and employment data and has not been updated since 1983.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

Section 1814(i) of the Social Security Act (the Act) provides for payment to Medicare hospices. Regulations for Medicare hospice care services (42 CFR part 418) were published in the Federal Register on December 16, 1983 (48 FR 56008), effective for hospice services furnished on or after November 1, 1983. These regulations provide for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Under § 418.306(c), we adjust the payment rates to reflect local differences in area wage levels.

The wage index currently used to adjust the hospice payment rates is the wage index published in the Federal Register on September 1, 1983 (48 FR 39871) for purposes of determining Medicare inpatient hospital prospective payment rates. This hospital wage index was based on calendar year 1981 hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS) ES 202 Employment, Wages and Contributions file for hospital workers.

Although Medicare hospice payment rates have been periodically updated since the inception of the Medicare hospice program in late 1982, we have never updated the wage index for hospices. Thus, the wage index developed based on 1981 BLS data is still used for hospices, even though HCFA now uses its own wage data surveys to construct an updated, more accurate hospital wage index. Previous attempts to begin to develop an updated wage index for hospices through rulemaking brought to our attention the divergent views within the hospice industry itself and between the industry and HCFA on how best to update the index. During discussions preliminary to developing a new wage index, the industry voiced concerns over the adverse financial impact of a new wage index on individual hospices and a possible reduction in overall Medicare hospice care payments, the effect of overarching Federal budgetary constraints. The result was that, in the absence of agreement, we continued to use a wage index that is clearly obsolete for geographically adjusting Medicare hospice payments.

II. Negotiated Rulemaking Process

In accordance with the Negotiated Rulemaking Act of 1990, we embarked on the use of the negotiated rulemaking process to promulgate a proposed rule specifying the wage index to be used to adjust payment rates for hospice services under Medicare. Our goal was to achieve the objectives associated with the use of the negotiated rulemaking process—reducing the time, cost, and other problems associated with the traditional rulemaking process.

To determine who should participate on the negotiating committee, a neutral facilitator selected by the Department of Health and Human Services conducted a convening process to ensure the presence on the committee of all interests affected by changes in the wage index. The intent was to establish a negotiating committee that represented all interests, although not necessarily all interested parties. The two national hospice organizations, the National

Hospice Organization and Hospice Association of America, were also contacted by the facilitator for their recommendations. The facilitator then interviewed a number of representatives in the hospice community to determine who would best represent different interests on the committee. The facilitator proposed, and we accepted, the following individuals as negotiation participants. We believe these individuals represent an appropriate mix of interests and backgrounds:

Donna Bales, Kansas Hospice Association
 Mary Ellen Bliss, American Association of Retired Persons
 Janice Casey, Hospice Care, Inc.
 Kate Colburn, Hospice of Central Iowa
 Randall DuFour, Hospice of Louisville, Kentucky
 Thomas Hoyer, Bureau of Policy Development, HCFA
 Mary Labiak, Hospice of the Florida Suncoast, Florida
 John J. Mahoney, National Hospice Organization
 Janet Neigh, Hospice Association of America
 Dale C. Smith, Academy of Hospice Physicians
 Mark Sterling, VITAS Healthcare
 Claire Tehan, Hospital Home Health Care Agency of California

With the assistance of the facilitator, we reached consensus with hospice industry groups and other affected interests on how best to propose an update to the present outdated hospice wage index. We believed a new wage index based on consensus would be less controversial and easier to administer than one developed by the traditional rulemaking process.

The committee held five public meetings beginning in November 1994 and ending in April 1995. In accordance with the Federal Advisory Committee Act, each meeting of the negotiating committee was announced in the Federal Register, at least 15 days before the meeting. The meeting notices indicated that the meetings were open to the public and that time was set aside at the end of each meeting day to hear any public statements.

On April 13, 1995, the committee reached consensus on an option for the proposed wage index. Reaching consensus was a long and deliberative process. The committee stressed that consensus meant that even if elements of the agreement were not the choice of individual committee members, all committee members could live with the agreement, considered as a whole. The committee concurred that a wage index based on the committee's