

# Issue Brief

FEDERAL ISSUE BRIEF



Analysis provided for MHA by Larry Goldberg, Goldberg Consulting

February 7, 2024

## CMS Issuing Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; etc.; Correction Notice

The Centers for Medicare and Medicaid Services (CMS) are issuing a 41-page correction notice to the Final Calendar Year (CY) 2024 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems; Quality Reporting Programs; Payment for Intensive Outpatient Services in Hospital Outpatient Departments, Community Mental Health Centers, Rural Health Clinics, Federally Qualified Health Centers, and Opioid Treatment Programs; Hospital Price Transparency;

Changes to Community Mental Health Centers Conditions of Participation, Changes to the Inpatient Prospective Payment System Medicare Code Editor; Rural Emergency Hospital Conditions of Participation Technical Correction” (referred to hereafter as the

“CY 2024 OPPS/ASC final rule with comment period”).

The document is currently available at: <https://public-inspection.federalregister.gov/2024-02631.pdf>. The notice is scheduled for publication on February 9. The changes are retroactive to January 1, 2024.

### Comment

First, this is an unusually long correction document. Second, one must question why it has taken CMS more than 3 months to release this notice. We are already 6 weeks into CY 2024.

The document is very duplicative in reporting the errors. CMS repeats the same correction item as it applies to the different aspects of the Final 2024 OPPS/ASC rule.

CMS refers to the actual published version of the CY 2024 OPPS/ASC final rule. The rule is available at: <https://www.govinfo.gov/content/pkg/FR-2023-11-22/pdf/2023-24293.pdf>. We have excerpted sections of the final rule that are being changed/ corrected to assist the reader in understanding the items being changed. Any comments in the excerpted **Federal Register** sections saying “We” refers to CMS.

We are including page numbers in red. The rule’s major heads include;

- I. Background (Page 3)
- II. Summary of Errors (Page 3)
- III. Waiver of Proposed Rulemaking and Delay in Effective Date (Page 20)
- IV. Correction of Errors (Page 22)

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

### **1. Hospital Outpatient Prospective Payment System (OPPS) Corrections**

A trim point was inadvertently not included in the rate setting process for two APCs: Hyperbaric Oxygen Therapy (APC 5061) and Ancillary Outpatient Services When Patient Dies (APC 5881). The geometric mean cost for APC 5061 will change significantly as a result from what was originally \$75.61 to \$135.89. (Page 4)

The change in the geometric mean cost for APC 5061 necessitates changing the OPPS weight scalar and OPPS relative payment weights to maintain budget neutrality for CY 2024, which results in changes in OPPS payment rates for items and services calculated using the weight scalar.

All payment rates and copayment amounts for items and services calculated using the weight scalar have changed in Addendum A. CMS notes that these changes to the OPPS payments and copayments are minor. The updated file is available online on the CMS website at:

<https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient>. (Page 10)

### **Comment**

For ease, please use the following link.

<https://www.cms.gov/medicare/payment/prospective-payment-systems/hospital-outpatient/regulations-notice/cms-1786-cn>

### **CPT Codes**

CMS is adding language that was “inadvertently omitted” stating that the OPPS status indicators for CPT codes 93297 and 93298 have been revised to indicate that they will be separately payable under the OPPS. (Page 5)

CMS “inadvertently failed” to account for the cost of a device that is an integral part of the kidney histotripsy procedure in the assignment of HCPCS code C9790 (Histotripsy (i.e., nonthermal ablation via acoustic energy delivery) of malignant renal tissue, including image guidance) to APC 1575, which has payment rate of \$12,500.50 and a minimum unadjusted copayment of \$2,500.10.

To correct this error, CMS is assigning HCPCS code C9790 to the APC with a payment rate that includes the device cost for the kidney histotripsy procedure – APC 1576 -- with a payment rate of \$17,500.50 and a minimum unadjusted copayment of \$3,500.10. (Page 11)

### **2. Ambulatory Surgical Center (ASC) Payment System Addenda Summary of Errors**

CMS is revising the ASC weight scalar from 0.8881 to 0.889. (Page 5)

For HCPCS code C9734, CMS says it inadvertently assigned a payment indicator of “G2” to this code. CMS is replacing payment indicator “G2” with payment indicator “J8” – Device-intensive procedure; paid

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at adjusted rate – and is revising the ASC payment weight and payment rate to 152.9811 and \$8,186.63, respectively. (Page 16)

For CPT code 58356, CMS says it inadvertently assigned a payment indicator of “G2” to this code. Therefore, in Addendum AA, CMS is correcting the payment indicator in the column titled “CY 2024 Payment Indicator” to “J8” and are revising the payment weight and payment rate to 62.4392 and \$3,341.37, respectively.

## **B. Correction of errors**

### **Comment**

Please note that the numbers below correspond to the numbers in the correction notice. Not all items, especially those that are basically grammatical are not shown and therefore, there are skips in the numbers. We are inserting the portions of the November 22 final rule after each section to assist in understanding the corrections being made.

(2). On page 81546, (Page 22)

a. second column, last partial paragraph, line 12, the figure “9.2” is corrected to read “9.1”.

b. third column, first full paragraph, line 4, the figure “0.0” is corrected to read “0.1”.

### ***Page 81546 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023***

“We” estimated the isolated impact of our OPPS policies on CMHCs because CMHCs have historically only been paid for partial hospitalization services under the OPPS. Beginning in CY 2024, they will also be paid for new intensive outpatient program (IOP) services under the OPPS. Continuing the provider-specific structure we adopted beginning in CY 2011, and basing payment fully on the type of provider furnishing the service, we estimate a 9.2 percent increase in CY 2024 payments to CMHCs relative to their CY 2023 payments.

We estimate that our update of the wage indexes based on the fiscal year (FY) 2024 IPPS final rule wage indexes will result in a 0.0 percent increase for urban hospitals under the OPPS and a

1.2 percent increase for rural hospitals. These wage indexes include the continued implementation of the Office of Management and Budget (OMB) labor market area delineations based on 2010 Decennial Census data, with updates, as discussed in section II.C of this final rule with comment period.

(4). On page 81578, (Page 23)

First column, first full paragraph, line 5, the figure “1.4429” is corrected to read “1.4414”.

**Page 81578 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

Using updated final rule claims data, we are updating the estimated CY 2024 unscaled relative payment weights by multiplying them by a weight scalar of 1.4429 to ensure that the final CY 2024 relative payment weights are scaled to be budget neutral.

(5.) On page 81592, third column, (Page 23)

a. Last paragraph under the heading "Step 7",

(1) Line 17, the figure "\$671.05" is corrected to read "\$670.36".

(2) Line 21, the figure \$658.03" is corrected to read "\$657.36".

b. Last paragraph,

(1) Line 3, the figure "\$402.63" is corrected to read "\$402.22".

(2) Line 4, the figure "\$671.05" is corrected to read "\$670.36".

(3) Line 6, the figure "\$394.82" is corrected to read "\$394.42".

(4) Line 7, the figure "\$658.03" is corrected to read "\$657.36".

**Page 81592 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

The final CY 2024 full national unadjusted payment rate for APC 5071 is \$671.05. The final reduced national adjusted payment rate for APC 5071 for a hospital that fails to meet the Hospital OQR Program requirements is \$658.03. This reduced rate is calculated by multiplying the reporting ratio of 0.9806 by the full unadjusted payment rate for APC 5071.

The labor-related portion of the final full national unadjusted payment is approximately \$402.63 (0.60 \* \$671.05). The labor-related portion of the final reduced national adjusted payment is approximately \$394.82 (0.60 \* \$658.03).

(6.) On page 81593, (Page 23)

a. First column, second paragraph, line 4, the equation "\$546.05 ( $\$402.63 * 1.3562$ )" is corrected to read "\$545.49 ( $\$402.22 * 1.3562$ )".

b. (1) Second column, first partial paragraph, line 1, the figures "\$535.45 ( $\$394.82$ " are corrected to read "\$534.91 ( $\$394.42$ ". ((Note: missing end ")")

(2) First full paragraph,

(a) Line 3, the figure "\$268.42" is corrected to read "\$268.14".

(b) Line 4, the figure "\$671.05" is corrected to read "\$670.36".

(c) Line 6, the figure "\$263.21" is corrected to read "\$262.94".

(d) Line 7, the figure "\$658.03" is corrected to read "\$657.36".

c. Third column, first full paragraph,

(1) Line 4, the figures "\$814.47 (\$546.05" are corrected to read "\$813.63 (\$545.49".

(2) Line 5, the figure "\$268.42" is corrected to read "\$268.14".

(3) Line 7, the figures "\$798.66 (\$535.45" are corrected to read \$797.85 (\$534.91".

(4) Line 8, the figure "\$263.21" is corrected to read "\$262.94".

d. The table titled "Table 7: Final Full National Unadjusted Payment Rate and Final Reduced National Adjusted Payment Rate," which appears near the top of the page, is corrected to read as follows:

Table 7: Final Full National Unadjusted Payment Rate and Final Reduced National Unadjusted Payment Rate

Final Full national unadjusted payment rate	Final Reduced national adjusted payment rate
\$813.63	\$797.85

**Page 81593 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

The wage adjusted labor-related portion of the final full national unadjusted payment is approximately \$546.05 ( $\$402.63 * 1.3562$ ).

The wage adjusted labor-related portion of the final reduced national adjusted payment is approximately \$535.45 ( $\$394.82 * 1.3562$ ).

The nonlabor-related portion of the final full national unadjusted payment is approximately \$268.42 ( $0.40 * \$671.05$ ). The nonlabor-related portion of the final reduced national adjusted payment is approximately \$263.21 ( $0.40 * \$658.03$ ).

The sum of the labor-related and nonlabor-related portions of the final full national unadjusted payment is approximately \$814.47 ( $\$546.05 + \$268.42$ ). The sum of the portions of the final reduced national adjusted payment is approximately \$798.66 ( $\$535.45 + \$263.21$ ) as shown in Table 7.

Final Full national unadjusted payment rate	Final Reduced national adjusted payment rate
\$814.47	\$798.66

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- (7). On page 81595, (Page 24) third column, second full paragraph,
- a. Line 5, the figure "\$134.21" is corrected to read "\$134.08".
  - b. Line 8, the figure "\$671.05" is corrected to read "\$670.36".

**Page 81595 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

Calculate the beneficiary payment percentage for the APC by dividing the APC's national unadjusted copayment by its payment rate. For example, using APC 5071, \$134.21 is approximately 20 percent of the full national unadjusted payment rate of \$671.05

- (9). On page 81801, (Page 25) in the table titled "Table 95: Skin Substitute Assignments to High-Cost and Low - Cost Groups for CY 2024, in the row for HCPCS code Q4282 in the columns titled "CY 2023 High/Low-Cost Assignment" and "CY 2024 High/Low-Cost Assignment" the entries "Low" are corrected to read "High".
- (11). On page 81854, (Page 26) second column, first partial paragraph, line 30, the figure "\$778.20" is corrected to read "\$777.39."

**Page 81854 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

The finalized payment amount for GOTP1 for CY 2024 is \$778.20. We are reflecting this policy change in new § 410.67(d)(4)(i)(F) by removing the proposed language.

12. On page 81855, (Page 26) second column,
- a. Second full paragraph,
    - (1) Line 31, the figure "\$259.40" is corrected to read "\$259.13".
    - (2) Line 35, the figure "\$778.20" is corrected to read "\$777.39".
  - b. In footnote 188, line 6, the figure "\$259.40" is corrected to read "\$259.13".

**Page 81855 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

(Intensive Outpatient (1–3 services) for Hospital- based IOPs), which is \$259.40, multiplied by 3 to reflect 3 days a week (for a weekly payment methodology), which results in a final payment rate of \$778.20

13. On page 81958, (Page 26)

- a. Second column, last partial paragraph, line 7, the figure "0.8881" is corrected to read "0.889".
- b. Third column, first full paragraph, line 8, the figure "0.8881" is corrected to read "0.889".

**Page 81858 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

Applying the ASC weight scalar, which is 0.8881 for this final rule with comment period and an increase from the CY 2023 ASC weight scalar of 0.8594, ensures that the ASC payment system remains budget neutral.

The final CY 2024 ASC weight scalar is 0.8881.

14. On page 81971, (Page 26) first column, first partial paragraph,

- a. Line 20, the figure "3636" is corrected to read "1536".
- b. Lines 20 through 21, the text "July 26, 2022. The measure steward (CDC) is pursuing endorsement for the modified version of this measure." is corrected to read "January 31, 2012. This measure's endorsement was removed in 2018."

**Page 81971 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

Regarding CBE endorsement, the current version of the measure in the Hospital OQR Program received CBE endorsement (CBE #3636) on July 26, 2022.

16. On page 81994, (Page 27) the table titled "Table 129: Finalized Hospital OQR Program Measure Set for the CY 2027 Payment Determination and Subsequent Years", is corrected to read as follows:

CBE #	Measure Name
0514	MRI Lumbar Spine for Low Back Pain†
None	Abdomen CT – Use of Contrast Material
0669	Cardiac Imaging for Preoperative Risk Assessment for Non-Cardiac, Low-Risk Surgery

0496	Median Time for Discharged ED Patients (Previously referred to as Median Time from ED Arrival to ED Departure for Discharged ED Patients)
0499	Left Without Being Seen†
0661	Head CT or MRI Scan Results for Acute Ischemic Stroke or Hemorrhagic Stroke who Received Head CT or MRI Scan Interpretation Within 45 minutes of ED Arrival
0658	Colonoscopy Follow-Up Interval (Previously referred to as Appropriate Follow-Up Interval for Normal Colonoscopy in Average Risk Patients)
1536	Cataracts Visual Function (Previously referred to as Cataracts: Improvement in Patient’s Visual Function within 90 Days Following Cataract Surgery) †*
2539	Facility 7-Day Risk-Standardized Hospital Visit Rate after Outpatient Colonoscopy
3490	Admissions and Emergency Department (ED) Visits for Patients Receiving Outpatient Chemotherapy
2687	Hospital Visits after Hospital Outpatient Surgery
None	OAS CAHPS – About Facilities and Staff
None	OAS CAHPS – Communication About Procedure
None	OAS CAHPS – Preparation for Discharge and Recovery
None	OAS CAHPS – Overall Rating of Facility
None	OAS CAHPS – Recommendation of Facility
3636	COVID-19 Vaccination Coverage Among Health Care Personnel ††
None	Breast Cancer Screening Recall Rates
None	ST-Segment Elevation Myocardial Infarction (STEMI) eCQM
None	Risk-Standardized Patient-Reported Outcome-Based Performance Measure (PRO-PM) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA) in the HOPD Setting (THA/TKA PRO-PM)**
3663e	Excessive Radiation eCQM (Previously referred to as Excessive Radiation Dose or Inadequate Image Quality for Diagnostic Computed Tomography (CT) in Adults eCQM)***

† CMS notes that CBE endorsement of this measure was removed.

†† This CBE endorsement number was assigned to the original version of the COVID-19 Vaccination Coverage

Among Health Care Personnel measure and not the finalized modification of the measure.

\* In the CY 2023 OPPTS/ASC final rule with comment period, CMS finalized keeping data collection and submission voluntary for this measure for the CY 2025 reporting period and subsequent years.

\*\* In this final rule, CMS is finalizing its proposal to adopt the THA/TKA PRO-PM beginning with the voluntary CY 2025 reporting period and with delayed implementation of mandatory reporting beginning (There is no specified date)



\*\*\* In this final rule, CMS is finalizing its proposal to adopt the Excessive Radiation eCQM beginning with the voluntary CY 2025 reporting period and with delayed implementation of mandatory reporting beginning with the CY 2027 reporting period/CY 2029 payment determination.

19. On page 82037, (Page 28) in the table titled "Table 139: Finalized ASCQR Program Measures Set for the CY 2024 Reporting Period/CY 2026 Payment Determination",

a. The entry for row 14 is corrected to read as follows:

ASC #	CBE #	Measure Name
ASC-20	3636++	COVID-19 Vaccination Coverage Among Health Care Personnel**

20. On page 82038, (Page 29) in the table titled "Table 140: Finalized ASCQR Program Measure Set for the CY 2025 Reporting Period/CY 2027 Payment Determination",

a. The entries for rows 20 and 21 are corrected to read as follows:

ASC #	CBE #	Measure Name
ASC-20	3636++	COVID-19 Vaccination Coverage Among Health Care Personnel
ASC-21	None	Risk-Standardized Patient-Reported Outcome-Based Performance Measure (PRO-PM) Following Elective Primary Total Hip Arthroplasty (THA) and/or Total Knee Arthroplasty (TKA) in the ASC Setting (THA/TKA PRO-PM)***

44. On page 82162, (Page 41)

a. Second column, first full paragraph, line 24, the figure "\$778.20" is corrected to read "\$777.39".

b. Third column, first partial paragraph, line 2, the figure "\$40,466" is corrected to read "\$40,424".

c. Third column, under "2. Estimated Effects of CY 2024 ASC Payment System Changes", first paragraph, line 10, the figure "0.8881" is corrected to read "0.889".

**Page 82162 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

We are finalizing to allow OTPs to bill a new HCPCS code (G0137) for IOP services based on a minimum of at least nine IOP services furnished to eligible patients per week, which results in a payment rate of \$778.20.

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The final CY 2024 OPPS relative payment weights by the final CY 2024 ASC scalar of 0.8881 months to correct errors

45. On page 82168, (Page 41) second column, first partial paragraph, line 7, the phrase "302 hours at a cost of \$6,670" is corrected to read "2,849 hours at a cost of \$68,218".

**Page 82168 Federal Register/ Vol. 88, No. 224/ Wednesday, November 22, 2023**

We estimate a total information collection burden increase for 4,089 ACSs of 302 hours at a cost of \$6,670 annually associated with our finalized policies and updated burden estimates for the CY 2030 reporting period/CY 2032 payment determination and subsequent year.

**Comment**

As noted previously, one must question why CMS has taken more than 3 months to correct these errors. One must also questions why there are so many errors. We all make mistakes. However, these errors would seem to appear that there is insufficient review of the material.

In the 41-page notice, CMS states that "it inadvertently" erred 24 times.

Finally, CMS has shorted a full a reporting of the errors. As noted above, we have provided sections of the Final CY 2024 OPPS/ASC rule to assist the reader in understanding the changes being made. CMS' reference of telling readers to go the Final OPPS/ASC rule is simply not helpful. If we can do such, why can't or won't CMS provide such.