

Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.494, by revising paragraph (b) to read as follows:

§ 180.494 Pyridaben; tolerance for residues.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of pyridaben and its metabolites PB-7 (2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3 (2H)-one) and PB-9 (2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl)benzylthio]-chloropyridazin-3 (2H)-one)

in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Cranberries	0.75	12/31/99

* * * * *

[FR Doc. 98-26617 Filed 10-2-98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, 483 and 489

[HCFA-1913-CN]

RIN 0938-AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction

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

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the interim final rule with comment period published in the **Federal Register** on May 12, 1998 entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities."

EFFECTIVE DATE: These corrections are effective July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786-5667.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 98-12208 of May 12, 1998 (63 FR 26252), there were a number of technical errors. In the preamble, the errors relate to incorrect listings in two tables, technical errors in the discussion of one issue, a typographical error in a table, and an incorrect paragraph designation. In the regulations text, the errors relate to two incorrect paragraph designations, a misspelled word in the heading to a section, and a grammatical correction. In addition, we inadvertently erased a change made by the regulation titled "Medicare Program; Scope of

Medicare Benefits and Application of the Outpatient Mental Health Treatment Limitation to Clinical Psychologist and Clinical Social Worker Services (HCFA-3706-F)" published in the **Federal Register** April 23, 1998 at 63 FR 20110. That regulation's revision to 42 CFR 424.32(a)(2) (see 63 FR 20130), regarding basic requirements for claims, was inadvertently erased by the interim final rule, which this notice corrects, titled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities" published May 12, 1998 when it subsequently revised the same section (see 63 FR 26311). This correction notice incorporates the revisions made by both rules. Finally, we are correcting § 483.20 (Resident assessment) because we erroneously used a superseded version of regulations text when revising that section. The corrections appear in this document under the heading "Correction of Errors."

Correction of Errors

In FR Doc. 98-12208 of May 12, 1998 (63 FR 26252), we are making the following corrections:

Corrections To Preamble

Page 26262, Table 2.C

1. The dot lead-in between the "Category" column and the "ADL index" column and between the "End splits" column and the "MDS RUG-III codes" column is removed.

2. *First column titled "Category"* Under the heading "IMPAIRED COGNITION," the first line is corrected to read as follows: "Score on MDS2.0 Cognitive Performance Scale >=3." The second and third lines under the heading are retained but are blank.

3. *Second column titled "ADL index"* After existing line 29, line 30 is added to read "4-5."

Existing line 34 is removed.

Existing line 37 is removed.

After existing line 38, line 39 is added to read "11-15."

4. *Third column titled "End splits"* Line 28 is corrected to read "Nursing rehabilitation."

Line 29 is corrected to read "Not receiving nursing rehabilitation."

Line 30 is corrected to read "Nursing rehabilitation."

Line 31 is corrected to read "Not receiving nursing rehabilitation."

Line 32 is corrected to read "Nursing rehabilitation."

Line 33 is corrected to read "Not receiving nursing rehabilitation."

Line 34 is corrected to read "Nursing rehabilitation."

Line 35 is corrected to read "Not receiving nursing rehabilitation."

Line 37 is corrected to read "Nursing rehabilitation."

Line 38 is corrected to read "Not receiving nursing rehabilitation."

Line 39 is corrected to read "Nursing rehabilitation."

Line 40 is corrected to read "Not receiving nursing rehabilitation."

Line 43 is corrected to read "Nursing rehabilitation."

Line 44 is corrected to read "Not receiving nursing rehabilitation."

Line 45 is corrected to read "Nursing rehabilitation."

Line 46 is corrected to read "Not receiving nursing rehabilitation."

5. *Fourth column, titled "MDS RUG III codes"*

Line 35, "BA1," is removed.

The corrected table is set forth below:

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Table 2.C
Crosswalk of MDS 2.0 Items and RUG III Groups

CATEGORY	ADL INDEX	END SPLITS	MDS RUG III CODES
REHABILITATION			
ULTRA HIGH Rx 720 minutes/week minimum At least 2 disciplines, one at least 5 days/week	16-18 9-15 4-8	NOT USED NOT USED NOT USED	RUC RUB RUA
VERY HIGH Rx 500 mins. a wk. minimum At least 1 discipline - 5 days	16-18 9-15 4-8	NOT USED NOT USED NOT USED	RVC RVB RVA
HIGH Rx 325 mins. a wk. minimum 1 discipline 5 days a week	13-18 8-12 4-7	NOT USED NOT USED NOT USED	RHC RHB RHA
MEDIUM Rx 150 mins. a wk. minimum 5 days across 3 disciplines	15-18 8-14 4-7	NOT USED NOT USED NOT USED	RMC RMB RMA
LOW Rx 45 minutes/week over at least 3 days Nursing rehabilitation 6 days/week, 2 activities	14-18 4-13	NOT USED NOT USED	RLB RLA
EXTENSIVE SERVICES-- (ADLSUM <7 SPECIAL) IV Feeding in last 7 days; In last 14 days, IV medications, suctioning, Tracheostomy care, ventilator/respirator	7-18 7-18 7-18	count of other categories code into plus IV Meds + Feed	SE3 SE2 SE1

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SPECIAL CARE-- (ADLSUM <7 Clin. Complex) MS, Quad, or CP with ADLsum >=10, Resp. Ther.=7 days Tube fed and aphasic; Radiation tx; Rec'g tx for surgical wnds/lesions or ulcers (2=sites, any stg; 1 site stg 3 or 4) Fever with Dehy., Pneu., Vomit., Weight Loss, or Tube Fed	17-18	NOT USED	SSC
	15-16	NOT USED	SSB
	7-14	NOT USED (Extensive <7 ADL)	SSA
CLINICALLY COMPLEX-- Burns, Coma, Septicemia, Pneumonia, Footwnds, Internal Bld, Dehyd, Tube fed (minimum 501 ml. fl, 26% cals), Oxygen, Transfusions, Hemiplegia with ADL sum >=10, Chemotherapy, Dialysis, No. of Days in last 14 - Phys. Visits/makes order changes: visits>=1 and chng.>=4; or visits>=2 and chng.>=2 Diabetes with injection 7 days/wk and order chng.>=2 days	17-18D	Signs of Depression	CC2
	17-18		CC1
	12-16D	Signs of Depression	CB2
	12-16		CB1
	4-11D	Signs of Depression	CA2
	4-11	(Special <7 ADL)	CA1

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IMPAIRED COGNITION Score on MDS2.0 Cognitive Performance Scale >=3	6-10	Nursing rehabilitation	IB2
	6-10	Not receiving nursing rehab	IB1
	4-5	Nursing rehabilitation	IA2
	4-5	Not receiving nursing rehab	IA1
BEHAVIOR ONLY Code on MDS 2.0 items: 4+ days a week - wandering, physical or verbal abuse inappropriate behavior or resists care; or hallucinations, or delusions	6-10	Nursing rehabilitation	BB2
	6-10	Not receiving nursing rehab	BB1
	4-5	Nursing rehabilitation	BA2
	4-5	Not receiving nursing rehab	BA1

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PHYSICAL FUNCTION REDUCED			
No clinical variables used	16-18	Nursing rehabilitation	PE2
	16-18	Not receiving nursing rehab	PE1
Nursing Rehab. Activities >=2, at least 6 days a wk:	11-15	Nursing rehabilitation	PD2
	11-15	Not receiving nursing rehab	PD1
Passive or Active ROM, amputation care, splint care,	9-10	Nursing rehabilitation	PC2
Training in dressing or grooming, eating or swallowing,	9-10	Not receiving nursing rehab	PC1
transfer, bed mobility or walking, communication, scheduled toileting program or bladder retraining.	6-8	Nursing rehabilitation	PB2
	6-8	Not receiving nursing rehab	PB1
	4-5	Nursing rehabilitation	PA2
	4-5	Not receiving nursing rehab	PA1
Default			

Source: Analysis of the 1995 Medicare Units Staff Time
Study: Update of RUG III Classification MDS

BILLING CODE 4210-01-C

Page 26260

In the second column, in lines 7 to 11, the second full sentence is corrected to read as follows: "On average, case-mix values based on MDS data are the same as analog-based values for the nursing index and 29 percent higher for the therapy index."

Page 26265

In the third column, in lines 4 to 9, the sentence beginning "As rehabilitation services * * *" is removed.

Page 26266

In the third column, in lines 15 to 21, the sentence beginning "Although the PPS rules * * *" is corrected to read as follows: "Although the PPS rules allow a 5-day grace period for setting the assessment reference date for the Medicare 90-day assessment, the Quarterly Review assessment must be completed within 92 days of completion of the last comprehensive assessment."

In the third column, in lines 21 to 28, the sentence beginning "Therefore, if a facility * * *" is corrected to read as follows: "Therefore, if a facility is using the Medicare 90-day assessment to also

meet the requirement for the Quarterly Review assessment, the assessment must be completed within 92 days of completion of the prior comprehensive assessment and have an assessment reference date that falls within the Medicare 90-day assessment window, days 80 through 89 (plus grace days, if needed) of the Part A stay."

In the third column, in the first full paragraph, in line 19 of that paragraph, in the sentence beginning, "These include * * *," the phrase "0 or 1 to 2 or 3" is corrected to read "0 to 1 or 2 to 3."

In the third column, in the first full paragraph, in line 23, in the sentence

beginning "As a complement * * *," the phrase "comprehensive assessment" is corrected to read "full assessment."

In the third column, in the first full paragraph, in line 32, in the sentence beginning "For those rare instances * * *," the phrase "a comprehensive assessment" is corrected to read "an assessment."

Page 26267

In the first column, in line 7, the word "comprehensive" is removed.

In the first column, in line 9, the word "deemed" is replaced with "automatically."

In the first column, in the first full paragraph, in the first sentence, in line 2, after the word "assessment," the clause "whichever is chosen to be used as the Initial Admission Assessment" is added.

In the first column, in the first full paragraph, the second sentence is corrected to read as follows: "As noted above, RAPs also must be completed as part of any Significant Change in Status assessments."

In the first column, in the second full paragraph, in the first sentence, in line 3, the words "be completed" are replaced with the phrase "have an assessment reference date."

In the first column, in the third full paragraph, in the first sentence, in line 3, the words "day 8" are replaced with the clause "the first assessment has been done."

Page 26267, Table 2.D

In the third column titled "Assessment reference date," in the first line, the phrase "Days 1-8*" is replaced with "Days 1-5*."

In the first footnote "*" for the table, the phrase "day 8" is replaced with "day 5."

The second footnote "***" for the table is corrected to read as follows: "***RAPs follow Federal rules."

Page 26268

In the first column, in the second full paragraph, in lines 3 to 10, the first sentence after the heading designated "a." is corrected to read as follows: "For a Medicare patient in a Part A covered stay, admitted in the 30 days before the SNF became subject to PPS, facility staff may choose to use the most recent full MDS assessment (within the past 30 days) for RUG-III classification."

In the first column, in the second full paragraph, in lines 16 to 18, the last sentence is corrected, and a new sentence is added after it to read as follows: "The next assessment will be the required Medicare 14-day assessment. This assessment must have

an assessment reference date that is 11 to 14 days after the day the facility became subject to SNF PPS."

In the third column, in line 5, the word "completed" is replaced with "included."

In the third column, in lines 9 to 10, the phrase "admission assessment" is replaced with "Initial Admission Assessment."

In the third column, in line 16, the word "and" is removed.

In the third column, in the second full paragraph, in lines 4 to 13, the second sentence is corrected, the third and fourth sentences are removed, and a new sentence is added after the corrected second sentence to read as follows: "For this reason, when using the 90-day assessment as the required quarterly assessment, it must be completed accordingly. When the 90-day assessment is not also the quarterly assessment, a 5-day grace period is available for setting the assessment reference date for this assessment, as for the 30-day and 60-day assessments."

Page 26275, Table 2.H

In the column labeled "Labor-related" for the RUGS-III category "RMB," in line 11, the amount presented contained a typographical error. The amount is corrected to read "\$185.78".

Page 26284

In the first column, in the second full paragraph, in line 24, the phrase "visits and" is added before the phrase "order changes."

In the first column, in the second full paragraph, in line 25, the phrase "7 days" is corrected to read "14 days."

Page 26301

In the first column, in lines 21 and 22, the reference to "diagnostic tests (§ 410.32(e))" is corrected to read "diagnostic tests (§ 410.32(d))."

Corrections to Regulatory Text

§ 410.32 [Corrected]

In the third column on page 26307, in the last line, and carrying over into the first column on page 26308, in the first line, in amendatory instruction number 4 for § 410.32 (Diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions), the reference to "paragraph (e)" is corrected to read "paragraph (d)" and the reference to "paragraph (e)(7)" is corrected to read "paragraph (d)(7)."

Also in the first column on page 26308, in the section heading to § 410.32, the word "texts" is corrected to read "tests"; and the paragraph designation "(e)" before the heading

"Diagnostic laboratory tests" is corrected to read "(d)."

§ 413.333 [Corrected]

In the second column on page 26309, in the definition of "Resident classification system" that appears in § 413.333 (Definitions), the phrase "as set out in the annual publication" is corrected to read "as set forth in the annual publication."

§ 424.40 [Corrected]

In the second column on page 26311, in amendatory statement number 3 for § 424.20 (Requirements for posthospital SNF care), "paragraph (a)" is corrected to read "paragraph (a)(1)."

§ 424.32 [Corrected]

In the second column, in § 424.32 (Basic requirements for all claims), revised paragraph (a)(2) is corrected to read as follows:

* * * * *

(2) A claim for physician services, clinical psychologist services, or clinical social worker services must include appropriate diagnostic coding for those services using ICD-9-CM, and a claim for physician services furnished to an SNF resident under § 411.15(p)(2) of this chapter must also include the SNF's Medicare provider number.

* * * * *

§ 483.20 [Corrected]

In the third column on page 26311, amendatory instruction number 2 and the amendment to § 483.20 are removed and a new amendatory instruction number 2 and amendment to § 483.20 are added in their place to read as follows:

Subpart B—Requirements for Long Term Care Facilities

2. In § 483.20, the introductory text to paragraph (b)(2) is revised to read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) *Comprehensive assessments.* * * *

(2) *When required.* Subject to the timeframes prescribed in § 413.343(b) of this chapter, a facility must conduct a comprehensive assessment of a resident as follows:

* * * * *

(Authority: Section 1888 of the Social Security Act (42 U.S.C. 1395yy))
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 29, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information
Resources Management.

[FR Doc. 98-26596 Filed 9-30-98; 4:28 pm]

BILLING CODE 4120-01-P

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 98-11]

Availability of Records to the Public— Electronic Freedom of Information Act

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission revises its regulations on public access to Commission records, materials, and information in order to clarify existing rules, provide information concerning the electronic availability of information and records, and to incorporate the requirements of the Electronic Freedom of Information Act Amendments of 1996.

DATES: This rule is effective November 4, 1998.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: secretary@fmc.gov

SUPPLEMENTARY INFORMATION: On July 22, 1998, the Federal Maritime Commission published a proposed rule to revise its regulations on public access to Commission records, materials, and information. 63 FR 39263-39267, July 22, 1998. The proposed rule clarified existing regulations, provided information concerning the electronic availability of information and records, and incorporated the requirements of the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA"), Pub. L. 104-231, 110 Stat. 3408. Interested parties were given the opportunity to submit comments on the proposed rule. The Commission received one comment jointly from two nonprofit groups claiming to have experience as requesters of Freedom of Information Act (FOIA) material and as counsel or assistant to requesters.

The comment addressed proposed section 503.24(b)(5)(iv), which reflects provisions in EFOIA requiring that previously requested records created on or after November 1, 1996, that are subject to subsequent, multiple FOIA requests be made available in agency electronic reading rooms. 5 U.S.C. 552(a)(2)(D). The proposed rule

provided that "[r]ecords created by the Commission since November 1, 1996," and subject to subsequent requests would be available through the Electronic Reading Room. The comment takes exception to the language "by the Commission," and argues that EFOIA requires that repeatedly requested, previously released records be made electronically available whether or not they were created by an agency.

The Department of Justice (DOJ) issued government-wide guidance advising agencies that the requirement of electronic reading room availability was applicable only to agency created records. *FOIA Update*, Winter 1997, at 4-5. Moreover, DOJ dismissed an identical comment when issuing its own implementing rules. 63 FR 29591, 29592, June 1, 1998. DOJ explained that by limiting the electronic reading room contents to "records created on or after November 1, 1996," EFOIA recognizes the practical limitations on electronic reading rooms. Presumably, according to DOJ, agencies will have their own materials dating from November 1, 1996 in an electronic form and can readily make those available through electronic communications. However, those records not created by the agency, but instead obtained by the agency, are not as likely to be readily available in electronic form. Thus, DOJ explained, only those records created by the agency are required to be available via the electronic reading room. *Id.* See *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144 (recognizing that agencies "either create or obtain" records subject to FOIA), cited in *FOIA Update*, Winter 1997, at 4-5. The Commission shares DOJ's view, and disagrees with the commenter's interpretation of this provision of EFOIA.

Moreover, at this time the Commission does not have sufficient computer equipment to transform paper documents submitted by the public into an electronic form that could then be made available through the electronic reading room on the Commission web page. However, the Commission is cognizant of the need to enhance public access to information through electronic means. The Commission has found that making documents and information accessible via the electronic reading room is of a benefit to both the public and the agency. Both economy and efficiency are served by providing this type of access. Accordingly, the Commission plans to eventually upgrade its computer resources to allow for "scanning" of documents into a form appropriate for the web page.

Thus, while not mandated by law, the Commission hopes eventually to make materials in this category available via the electronic reading room, to the extent it is reasonable and practical to do so.

This rule is not a significant regulatory action as defined by Executive Order 12866, Regulatory Planning and Review, and therefore, is not subject to review by the Office of Information and Regulatory Affairs, in the Office of Management and Budget.

This rule concerns internal administrative procedures for making information available to the public, and, accordingly, the Chairman certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The rule contains no additional information collection or record keeping requirements. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* do not apply.

List of Subjects in 46 CFR part 503

Classified information, Freedom of Information, Privacy, Sunshine Act. For the reasons set out in the preamble, the Commission amends 46 CFR part 503 as follows:

PART 503—PUBLIC INFORMATION

1. The authority citation for part 503 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

2. Revise subpart C to read as follows:

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

Sec.

503.21 Mandatory public records.

503.22 Records available at the Office of the Secretary.

503.23 Records available upon written request.

503.24 Information available via the internet.

Subpart C—Records, Information and Materials Generally Available to the Public Without Resort to Freedom of Information Act Procedures

§ 503.21 Mandatory public records.

(a) The Commission, as required by the Freedom of Information Act, 5 U.S.C. 552, shall make the following materials available for public inspection and copying:

(1) Final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases.