Revision of Certain Market Basket Updates and Productivity Adjustment

**Summary:** Incorporates a productivity adjustment into the market basket update for inpatient hospitals, home health providers, nursing homes, hospice providers, inpatient psychiatric facilities, long-term care hospitals and inpatient rehabilitation facilities beginning in various years and implements additional market basket reductions for certain providers. It would also incorporate a productivity adjustment into payment updates for Part B providers who do not already have such an adjustment.

**Status update:** On October 1, 2010, CMS issued the final hospital inpatient prospective payment system.

**Next steps:**
- April 1, 2010 – Changes go into effect regarding market basket changes for inpatient hospital stays (in advance of the supplemental rule being published)
- May 21, 2010 -- CMS issued a supplemental proposed rule implementing changes in payments for inpatient stays in general acute care hospitals paid under the Inpatient Prospective Payment System (IPPS hospitals) and long-term care hospitals (LTCHs) for Fiscal Year (FY) 2011 that were required by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively known as the Affordable Care Act).
- June 21, 2010 – Comments due on the supplemental rule regarding inpatient hospital stays
- July 2, 2010 -- CMS issued a proposed rule that would update payment policies and rates for both hospital outpatient departments (HOPDs) and ambulatory surgical centers (ASCs) for calendar year (CY) 2011.
- July 16, 2010 -- CMS issues notices regarding new payment rates for hospice and skilled nursing facilities (SNFs), as well as a proposed rule regarding payments for home health agencies.
- July 22, 2010 -- CMS issued a notice (without a comment period) regarding payments for inpatient rehabilitation facilities.
- August 16, 2010 – CMS the Center for Medicare and Medicaid Services issued final rules and an interim final rule with comment with respect to Medicare Program including the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System Changes and FY2011 Rates; Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care Services; and with respect to accreditation for providers of Inpatient Psychiatric Services as part of the Medicaid Program.
- August 31, 2010 – Comments due on proposed rule for HOPDS, ASCs
- September 14, 2010 – Comments due on notice for SNFs and home health agencies
• September 20, 2010 – Comments due on notice for hospice
• October 1, 2010 – New payment rules go into effect for inpatient rehabilitation facilities and CMS issued final hospital inpatient prospective payment system rule.
• November 1, 2010 – CMS issues final rule for HOPDS, ASCs
• January 1, 2011 – Changes for CY 2011 go into effect for HOPDS, ASCs, hospice, SNFs, and home health agencies

**Additional information:**

• CMS October 1 final rule (hospital inpatient prospective payment system) –
• CMS May 21 fact sheet (hospital inpatient)--
  http://www.cms.gov/apps/media/fact_sheets.asp
• July 2 proposed rule (HOPDs and ASCs)-- http://www.ofr.gov/OFRUpload/OFRData/2010-16043_PI.pdf
• CMS July 2 press release(HOPDs and ASCs) --
• CMS July 2 fact sheet (HOPDs and ASCs)--
  http://www.cms.gov/apps/media/fact_sheets.asp
• Hospice proposed rule (published in the Federal Register on July 22) --
• CMS July 16 fact sheet (hospice)-- http://www.cms.gov/apps/media/fact_sheets.asp
• SNFs notice with comment period (published July 22) --
• CMS July 16 press release (home health agencies) --
• Home health agencies proposed rule (published in the Federal Register on July 23, 2010) --
  http://www.ofr.gov/OFRUpload/OFRData/2010-17753_PI.pdf
• July 22 Federal Register notice regarding inpatient rehabilitation facilities --
  http://www.ofr.gov/OFRUpload/OFRData/2010-17753_PI.pdf
• CMS August 16 final rules and interim final rule with comment --
• Center for Medicare and Medicaid (CMS) market basket data --
  http://www.cms.gov/MedicareProgramRatesStats/04_MarketBasketData.asp#TopOfPage
• CMS market basket research and information --
  http://www.cms.gov/MedicareProgramRatesStats/05_MarketBasketResearch.asp#TopOfPage
• CMS actual market basket information --

**Long summary:**

Sec. 3401. Revision of certain market basket updates and incorporation of productivity improvements into market basket updates that do not already incorporate such improvements (as modified by sec. 10319 and sec. 1105 of HCEA).

Inpatient and outpatient hospitals, inpatient rehabilitation facilities, and psychiatric hospitals and units. Reduces the annual Medicare payment update by 0.25 percentage points in 2010 and 2011 for inpatient and outpatient hospitals, inpatient rehabilitation facilities and psychiatric hospitals and units. Reduces the update for these providers by 0.1 percentage points in 2012-2013, by 0.3...
percentage points in 2014, by 0.2 percentage points in 2015-2016, and by 0.75 percentage points in 2017-2019. The adjustments are applied based on the fiscal year, calendar year or rate year as applicable for the particular provider type. The reductions are applied after applicable adjustments for productivity (described below) and for failure to report quality measures or to be a meaningful user of electronic health records (for inpatient acute hospitals after 2015). The reductions may cause a negative update and may result in payment rates for a year being less than the payment rates for the preceding year.

Long term care hospitals. For long term care hospitals, the reduction applicable to each rate year is 0.25 percentage points in 2010, 0.5 percentage points in 2011, 0.1 percentage points in 2012-2013, 0.3 percentage points in 2014, 0.2 percentage points in 2015-2016, and 0.75 percentage points in 2017-2019. The reductions may cause a negative update and may result in payment rates for a rate year being less than the payment rates for the preceding rate year.

Home health agencies. Hospice providers, Skilled nursing facilities (SNFs). Reduces the market basket update for home health agencies by 1.0 percentage point in 2011 through 2013 and reduces the update for hospice providers by 0.3 percentage points in fiscal years 2013-2019 in addition to the productivity adjustments described below. Reductions may cause a negative update and may result in payment rates for a year being less than the payment rates for the preceding year. In 2014-2019, the 0.3 percentage point reduction applicable to hospice providers is waived if in any year from 2014-2019, the previous year's total percentage of insured population (as reflected in the share of the total, non-elderly population) is more than five percentage points below CBO projections of such percentage at the time of bill enactment. No change in current law updates for SNFs other than the productivity adjustment described below.

Laboratory services. Eliminates the 0.5 percentage point reduction applicable to laboratory services in fiscal years 2011-2013 and implements a reduction of 1.75 percentage points in fiscal years 2011-2015 in addition to the productivity adjustment described below, which applies to laboratory services beginning in FY 2011. The 1.75 percentage point reduction may cause a negative update and may result in payment rates for a fiscal year being less than the payment rates for the preceding fiscal year, but the productivity offset is not applied if the otherwise applicable update is 0.0 or negative and its application cannot cause the update to be negative. (The restriction on application of the productivity adjustment applies only to laboratory services).

Productivity adjustment. Implements a productivity adjustment to the market basket update for inpatient and outpatient hospitals, inpatient rehabilitation facilities, psychiatric hospitals and units, long term care hospital services and SNFs beginning in calendar, fiscal or rate year 2012, as applicable. Eliminates the one percentage point reduction applicable to renal dialysis facilities in 2012 and subsequent years and applies a productivity adjustment beginning in 2012. Applies a productivity adjustment to the update for hospice providers beginning in FY 2013 and to the update for home health agencies beginning in 2015.

Beginning in 2011, applies a productivity adjustment to consumer price index (CPI) updates for these Part B items and services: ambulance, laboratory, ambulatory surgical center, durable medical equipment, prosthetic devices, orthotics and prosthetics, and any fee schedules applicable to medical supplies, home dialysis supplies and equipment, therapeutic shoes, parenteral and enteral nutrients, equipment, and supplies, electromyogram devices, salivation devices, blood products, and transfusion medicine. The productivity adjustment is the 10-year moving average of changes in annual economy-wide private non-farm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable year, fiscal year, cost
reporting period, or other annual period). Except for laboratory services, the productivity adjustments may cause a negative update and may result in payment rates for a year being less than the payment rates for the preceding year.

**Legislative text:**

SEC. 3401. REVISION OF CERTAIN MARKET BASKET UPDATES AND INCORPORATION OF PRODUCTIVITY IMPROVEMENTS INTO MARKET BASKET UPDATES THAT DO NOT ALREADY INCORPORATE SUCH IMPROVEMENTS.

(a) INPATIENT ACUTE HOSPITALS.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 3001(a)(3), is further amended—

1. in clause (i)(XX), by striking “clause (viii)” and inserting “clauses (viii), (ix), (xi), and (xii)”;
2. in the first sentence of clause (viii), by inserting “of such applicable percentage increase (determined without regard to clause (ix), (xi), or (xii))” after “one-quarter”;
3. in the first sentence of clause (ix)(I), by inserting “(determined without regard to clause (viii), (xi), or (xii))” after “clause (i)” the second time it appears; and
4. by adding at the end the following new clauses:

“(ii) For 2012 and each subsequent fiscal year, after determining the applicable percentage increase described in clause (i) and after application of clauses (viii) and (ix), such percentage increase shall be reduced by the productivity adjustment described in subclause (II).

“(II) The productivity adjustment described in this subclause, with respect to a percentage, factor, or update for a fiscal year, year, cost reporting period, or other annual period, is a productivity adjustment equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multi-factor productivity (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, year, cost reporting period, or other annual period).

“(III) The application of subclause (I) may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

“(xii) After determining the applicable percentage increase described in clause (i), and after application of clauses (viii), (ix), and (xi), the Secretary shall reduce such applicable percentage increase—

“(I) for each of fiscal years 2010 and 2011, by 0.25 percentage point;

“(II) for each of fiscal years 2012 and 2013, by 0.1 percentage point;

“(III) for fiscal year 2014, by 0.3 percentage point;

“(IV) for each of fiscal years 2015 and 2016, by 0.2 percentage point; and

“(V) for each of fiscal years 2017, 2018, and 2019, by 0.75 percentage point.

The application of this clause may result in the applicable percentage increase described in clause (i) being less than 0.0 for a fiscal year, and may result in payment rates under this section for a fiscal year being less than such payment rates for the preceding fiscal year.

(b) SKILLED NURSING FACILITIES.—Section 1888(e)(5)(B) of the Social Security Act (42 U.S.C. 1395yy(e)(5)(B)) is amended—

1. by striking “PERCENTAGE.—The term” and inserting “PERCENTAGE.—

“(i) IN GENERAL.—Subject to clause (ii), the term”;

2. by adding at the end the following new clause:

“(ii) ADJUSTMENT.—For fiscal year 2012 and each subsequent fiscal year, after determining the percentage described in clause (i), the Secretary shall reduce such percentage by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such percentage being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.”.

(c) LONG-TERM CARE HOSPITALS.—Section 1886(m) of the Social Security Act (42 U.S.C. 1395ww(m)) is amended by adding at the end the following new paragraphs:

1. “(3) IMPLEMENTATION FOR RATE YEAR 2010 AND SUBSEQUENT YEARS.—

“(A) IN GENERAL.—In implementing the system described in paragraph (1) for rate year 2010 and each subsequent rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, shall be reduced—

“(i) for rate year 2012 and each subsequent rate year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of rate years 2010 through 2019, by the other adjustment described in paragraph (4).
‘‘(B) SPECIAL RULE.—The application of this paragraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.

‘‘(4) OTHER ADJUSTMENT.—For purposes of paragraph (3)(A)(ii), the other adjustment described in this paragraph is—

‘‘(A) for rate year 2010, 0.25 percentage point;
‘‘(B) for rate year 2011, 0.50 percentage point;
‘‘(C) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point;
‘‘(D) for rate year 2014, 0.3 percentage point;
‘‘(E) for each of rate years 2015 and 2016, 0.2 percentage point; and
‘‘(F) for each of rate years 2017, 2018, and 2019, 0.75 percentage point.”’.  

(d) INPATIENT REHABILITATION FACILITIES.—Section 1886(j)(3) of the Social Security Act (42 U.S.C. 1395ww(j)(3)) is amended—

(1) in subparagraph (C)—
(A) by striking “FACTOR.—For purposes” and inserting “FACTOR.—
‘‘(i) IN GENERAL.—For purposes’’;
(B) by inserting “subject to clause (ii)” before the period at the end of the first sentence of clause (i), as added by paragraph (1); and
(C) by adding at the end the following new clause:
‘‘(ii) PRODUCTIVITY AND OTHER ADJUSTMENT.—After establishing the increase factor described in clause (i) for a fiscal year, the Secretary shall reduce such increase factor—
‘‘(I) for fiscal year 2012 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and
‘‘(II) for each of fiscal years 2010 through 2019, by the other adjustment described in subparagraph (D). The application of this clause may result in the increase factor under this subparagraph being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.”; and
(2) by adding at the end the following new subparagraph:
‘‘(D) OTHER ADJUSTMENT.— For purposes of subparagraph (C)(ii)(II), the other adjustment described in this subparagraph is—
‘‘(i) for each of fiscal years 2010 and 2011, 0.25 percentage point;
‘‘(ii) for each of fiscal years 2012 and 2013, 0.1 percentage point;
‘‘(iii) for fiscal year 2014, 0.3 percentage point;
‘‘(iv) for each of fiscal years 2015 and 2016, 0.2 percentage point; and
‘‘(v) for each of fiscal years 2017, 2018, and 2019, 0.75 percentage point.”’.  

(e) HOME HEALTH AGENCIES.—Section 1895(b)(3)(B) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(B)) is amended—

(1) in clause (ii)(V), by striking “clause (v)” and inserting “clauses (v) and (vi)”;
(2) by adding at the end the following new clause:
‘‘(vi) ADJUSTMENTS.—After determining the home health market basket percentage increase under clause (iii), and after application of clause (v), the Secretary shall reduce such percentage—
‘‘(I) for 2015 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and
‘‘(II) for each of fiscal years 2010 through 2019, by 1 percentage point. The application of this clause may result in the home health market basket percentage increase under clause (iii) being less than 0.0 for a year, and may result in payment rates under the system under this subsection for a year being less than such payment rates for the preceding year.”

(f) PSYCHIATRIC HOSPITALS.—Section 1886 of the Social Security Act, as amended by sections 3001, 3008, 3025, and 3133, is amended by adding at the end the following new subsection:

‘‘(s) PROSPECTIVE PAYMENT FOR PSYCHIATRIC HOSPITALS.—
‘‘(1) REFERENCE TO ESTABLISHMENT AND IMPLEMENTATION OF SYSTEM.—For provisions related to the establishment and implementation of a prospective payment system for payments under this title for inpatient hospital services furnished by psychiatric hospitals (as described in clause (i) of subsection (d)(1)(B)) and psychiatric units (as described in the matter following clause (v) of such subsection), see section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.
‘‘(2) IMPLEMENTATION FOR RATE YEAR BEGINNING IN 2010 AND SUBSEQUENT RATE YEARS.—
‘‘(A) IN GENERAL.—In implementing the system described in paragraph (1) for the rate year beginning in 2010 and any subsequent rate year, any update to a base rate for days during the rate year for a psychiatric hospital or unit, respectively, shall be reduced—
‘‘(i) for the rate year beginning in 2012 and each subsequent rate year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and
‘‘(ii) for each of the rate years beginning in 2010 through 2019, by the other adjustment described in paragraph (3).
‘‘(B) SPECIAL RULE.—The application of this paragraph may result in such update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.
‘‘(3) OTHER ADJUSTMENT.—For purposes of paragraph (2)(A)(ii), the other adjustment described in this paragraph is—
‘‘(A) for each of the rate years beginning in 2010 and 2011, 0.25 percentage point;
‘‘(B) for each of the rate years beginning in 2012 and 2013, 0.1 percentage point;
‘‘(C) for the rate year beginning in 2014, 0.3 percentage point;
‘‘(D) for each of the rate years beginning in 2015 and 2016, 0.2 percentage point; and
‘‘(E) for each of the rate years beginning in 2017, 2018, and 2019, 0.75 percentage point.
‘‘(4) QUALITY REPORTING.—
‘‘(A) REDUCTION IN UPDATE FOR FAILURE TO REPORT.—
‘‘(i) IN GENERAL.—Under the system described in paragraph (1), for rate year 2014 and each subsequent rate year, in the case of a psychiatric hospital or psychiatric unit that does not submit data to the Secretary in accordance with subparagraph (C) with respect to such a rate year, any annual update to a standard Federal rate for discharges for the hospital during the rate year, and after application of paragraph (2), shall be reduced by 2 percentage points.
‘‘(ii) SPECIAL RULE.—The application of this subparagraph may result in such annual update being less than 0.0 for a rate year, and may result in payment rates under the system described in paragraph (1) for a rate year being less than such payment rates for the preceding rate year.
‘‘(B) NONCUMULATIVE APPLICATION.—Any reduction under subparagraph (A) shall apply only with respect to the rate year involved and the Secretary shall not take into account such reduction in computing the payment amount under the system described in paragraph (1) for a subsequent rate year.
‘‘(C) SUBMISSION OF QUALITY DATA.—For rate year 2014 and each subsequent rate year, each psychiatric hospital and psychiatric unit shall submit to the Secretary data on quality measures specified under subparagraph (D). Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this subparagraph.
‘‘(D) QUALITY MEASURES.—
‘‘(i) IN GENERAL.—Subject to clause (ii), any measure specified by the Secretary under this subparagraph must have been endorsed by the entity with a contract under section 1890(a).
‘‘(ii) EXCEPTION.—In the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the entity with a contract under section 1890(a), the Secretary may specify a measure that is not so endorsed as long as due consideration is given to measures that have been endorsed or adopted by a consensus organization identified by the Secretary.
‘‘(iii) TIME FRAME.—Not later than October 1, 2012, the Secretary shall publish the measures selected under this subparagraph that will be applicable with respect to rate year 2014.
‘‘(E) PUBLIC AVAILABILITY OF DATA SUBMITTED.—The Secretary shall establish procedures for making data submitted under subparagraph (C) available to the public. Such procedures shall ensure that a psychiatric hospital and a psychiatric unit has the opportunity to review the data that is to be made public with respect to the hospital or unit prior to such data being made public. The Secretary shall report quality measures that relate to services furnished in inpatient settings in psychiatric hospitals and psychiatric units on the Internet website of the Centers for Medicare & Medicaid Services.’’.

(g) HOSPICE CARE.—Section 1814(i)(1)(C) of the Social Security Act (42 U.S.C. 1395f(i)(1)(C)), as amended by section 3132, is amended by adding at the end the following new clauses:
‘‘(iv) After determining the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, with respect to fiscal year 2013 and each subsequent fiscal year, the Secretary shall reduce such percentage—
‘‘(I) for 2013 and each subsequent fiscal year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and
‘‘(II) subject to clause (v), for each of fiscal years 2013 through 2019, by 0.3 percentage point.
The application of this clause may result in the market basket percentage increase under clause (ii)(VII) or (iii), as applicable, being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

“(v) Clause (iv)(II) shall be applied with respect to any of fiscal years 2014 through 2019 by substituting ‘0.0 percentage points’ for ‘0.3 percentage point’, if for such fiscal year—

“(I) the excess (if any) of—

“(aa) the total percentage of the non-elderly insured population for the preceding fiscal year (based on the most recent estimates available from the Director of the Congressional Budget Office before a vote in either House on the Patient Protection and Affordable Care Act that, if determined in the affirmative, would clear such Act for enrollment); over

“(bb) the total percentage of the non-elderly insured population for such preceding fiscal year (as estimated by the Secretary); exceeds

“(II) 5 percentage points.”.

(h) DIALYSIS.—Section 1881(b)(14)(F) of the Social Security Act (42 U.S.C. 1395rr(b)(14)(F)) is amended—

(1) in clause (i)—

(A) by inserting “(I)” after “(F)(i)”

(B) in subclause (I), as inserted by subparagraph (A)—

(i) by striking “clause (ii)” and inserting “subclause (II) and clause (ii)”;

(ii) by striking “minus 1.0 percentage point”;

and

(C) by adding at the end the following new subclause:

“(II) For 2012 and each subsequent year, after determining the increase factor described in subclause (I), the Secretary shall reduce such increase factor by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such increase factor being less than 0.0 for a year, and may result in payment rates under the payment system under this paragraph for a year being less than such payment rates for the preceding year.”;

and

(2) in clause (ii)(II)—

(A) by striking “The” and inserting “Subject to clause (i)(II), the”;

and

(B) by striking “clause (i) minus 1.0 percentage point” and inserting “clause (i)(I)”.

(i) OUTPATIENT HOSPITALS.—Section 1833(t)(3) of the Social Security Act (42 U.S.C. 1395l(t)(3)) is amended—

(1) in subparagraph (C)(iv), by inserting “and subparagraph (F) of this paragraph” after “(17)”;

and

(2) by adding at the end the following new subparagraphs:

“(F) PRODUCTIVITY AND OTHER ADJUSTMENT.—After determining the OPD fee schedule increase factor under subparagraph (C)(iv), the Secretary shall reduce such increase factor—

“(i) for 2012 and subsequent years, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and

“(ii) for each of 2010 through 2019, by the adjustment described in subparagraph (G).

The application of this subparagraph may result in the increase factor under subparagraph (C)(iv) being less than 0.0 for a year, and may result in payment rates under the payment system under this subsection for a year being less than such payment rates for the preceding year.

“(G) OTHER ADJUSTMENT.—For purposes of subparagraph (F)(ii), the adjustment described in this subparagraph is—

“(i) for each of 2010 and 2011, 0.25 percentage point;

“(ii) for each of 2012 and 2013, 0.1 percentage point;

“(iii) for 2014, 0.3 percentage point;

“(iv) for each of 2015 and 2016, 0.2 percentage point; and

“(v) for each of 2017, 2018, and 2019, 0.75 percentage point.”.

(j) AMBULANCE SERVICES.—Section 1834(l)(3) of the Social Security Act (42 U.S.C. 1395m(l)(3)) is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B)—

(A) by inserting “, subject to subparagraph (C) and the succeeding sentence of this paragraph,” after “increased”;

and

(B) by striking the period at the end and inserting “; and’’;

(3) by adding at the end the following new subparagraph:

“(C) for 2011 and each subsequent year, after determining the percentage increase under subparagraph (B) for the year, reduce such percentage increase by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”; and

(4) by adding at the end the following flush sentence:
‘‘The application of subparagraph (C) may result in the percentage increase under subparagraph (B) being less than 0.0 for a year, and may result in payment rates under the fee schedule under this subsection for a year being less than such payment rates for the preceding year.’’.  

(k) AMBULATORY SURGICAL CENTER SERVICES.—Section 1833(i)(2)(D) of the Social Security Act (42 U.S.C. 1395I(i)(2)(D)) is amended—  

(1) by redesignating clause (v) as clause (vi); and  

(2) by inserting after clause (iv) the following new clause:  

‘‘(v) In implementing the system described in clause (i) for 2011 and each subsequent year, any annual update under such system for the year, after application of clause (iv), shall be reduced by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II). The application of the preceding sentence may result in such update being less than 0.0 for a year, and may result in payment rates under the system described in clause (i) for a year being less than such payment rates for the preceding year.’’.  

(l) LABORATORY SERVICES.—Section 1833(h)(2)(A) of the Social Security Act (42 U.S.C. 1395I(h)(2)(A)) is amended—  

(1) in clause (i)—  

(A) by inserting ‘‘, subject to clause (iv),’’ after ‘‘year) by’’; and  

(B) by striking ‘‘through 2013’’ and inserting ‘‘and 2010’’; and  

(2) by adding at the end the following new clause:  

‘‘(iv) After determining the adjustment to the fee schedules under clause (i), the Secretary shall reduce such adjustment—  

‘‘(I) for 2011 and each subsequent year, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II); and  

‘‘(II) for each of 2011 through 2015, by 1.75 percentage points.  

Subclause (I) shall not apply in a year where the adjustment to the fee schedules determined under clause (i) is 0.0 or a percentage decrease for a year. The application of the productivity adjustment under subclause (I) shall not result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year. The application of subclause (II) may result in an adjustment to the fee schedules under clause (i) being less than 0.0 for a year, and may result in payment rates for a year being less than such payment rates for the preceding year.’’.  

(m) CERTAIN DURABLE MEDICAL EQUIPMENT.—Section 1834(a)(14) of the Social Security Act (42 U.S.C. 1395M(a)(14)) is amended—  

(1) in subparagraph (K)—  

(A) by striking ‘‘2011, 2012, and 2013,’’; and  

(B) by inserting ‘‘and’’ after the semicolon at the end;  

(2) by striking subparagraphs (L) and (M) and inserting the following new subparagraph:  

‘‘(L) for 2011 and each subsequent year—  

‘‘(i) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—  

‘‘(ii) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).’’; and  

(3) by adding at the end the following flush sentence:  

‘‘The application of subparagraph (L)(ii) may result in the covered item update under this paragraph being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.’’.

(n) PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Section 1834(h)(4) of the Social Security Act (42 U.S.C. 1395M(h)(4)) is amended—  

(1) in subparagraph (A)—  

(A) by striking ‘‘a subsequent year’’ and inserting ‘‘for each of 2007 through 2010’’; and  

(B) in clause (x)—  

(i) by striking ‘‘a subsequent year’’ and inserting ‘‘for each of 2007 through 2010’’; and  

(ii) by inserting ‘‘and’’ after the semicolon at the end;  

(C) by adding at the end the following new clause:  

‘‘(xi) for 2011 and each subsequent year—  

‘‘(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—  

‘‘(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).’’; and  

(D) by adding at the end the following flush sentence:  

‘‘The application of subparagraph (C) may result in the percentage increase under subparagraph (B) being less than 0.0 for a year, and may result in payment rates under the fee schedule under this subsection for a year being less than such payment rates for the preceding year.’’.
The application of subparagraph (A)(xi)(II) may result in the applicable percentage increase under subparagraph (A) being less than 0.0 for a year, and may result in payment rates under this subsection for a year being less than such payment rates for the preceding year.

(o) OTHER ITEMS.—Section 1842(s)(1) of the Social Security Act (42 U.S.C. 1395u(s)(1)) is amended—

(1) in the first sentence, by striking “Subject to” and inserting “(A) Subject to”;

(2) by striking the second sentence and inserting the following new subparagraph:

“(B) Any fee schedule established under this paragraph for such item or service shall be updated—

“(i) for years before 2011—

“(I) subject to subclause (II), by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the preceding year; and

“(II) for items and services described in paragraph (2)(D) for 2009, section 1834(a)(14)(J) shall apply under this paragraph instead of the percentage increase otherwise applicable; and

“(ii) for 2011 and subsequent years—

“(I) the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year, reduced by—

“(II) the productivity adjustment described in section 1886(b)(3)(B)(xi)(II).”;

and

(3) by adding at the end the following flush sentence:

“The application of subparagraph (B)(ii)(II) may result in the update under this paragraph being less than 0.0 for a year, and may result in payment rates under any fee schedule established under this paragraph for a year being less than such payment rates for the preceding year.”.

(p) NO APPLICATION PRIOR TO APRIL 1, 2010.—Notwithstanding the preceding provisions of this section, the amendments made by subsections (a), (c), and (d) shall not apply to discharges occurring before April 1, 2010.