

- While colocation is not an essential factor, the distance between the two facilities must be reasonable.

- The existence of a transfer agreement or a shared service agreement between the SNF and the hospital does not determine a SNF to be hospital-based and is not considered in determining the status of the facility.

We recognize that the April 7, 2000 final rule for the PPS for outpatient hospital services promulgated a set of criteria for use in determining whether an entity is “provider-based” (65 FR 18504), including several criteria that were similar to the 1980 hospital-based criteria for SNFs. However, SNFs are not subject to the provider-based regulations (see § 413.65(a)(1)(ii)(D)).

B. Proposed Revision

It has been noted that the regulations at § 413.65 already set forth detailed criteria for determining provider-based status in other settings, but that no similar regulations exist with regard to SNFs. The need to clarify the criteria for identifying distinct parts is especially pronounced in the context of survey and certification procedures.

In addition, the concept of a distinct part is actually broader than that of a “hospital-based” facility, in that the former can encompass situations in which a SNF is a part of a larger institution that is not a hospital (for example, a domiciliary or “board and care” facility). Further, the distinct part concept applies to Medicaid nursing facilities (NFs) as well as to SNFs, and involves not only payment issues, but also the requirements specified in the regulations at part 483, subpart B (the requirements for program participation for long-term care facilities (that is, SNFs and NFs)). Further, while the regulations at § 483.5 (which define a long-term care facility in this context) refer to the existence of “distinct part” SNFs and NFs, they do not currently contain a specific definition of this term.

Accordingly, in this proposed rule, we propose to add a number of specific criteria that would serve to determine whether a SNF or NF can be designated as a distinct part of a hospital or other entity, in the requirements for participation for long-term care facilities in subpart B of part 483. These proposed revisions would essentially reflect the 1980 “hospital-based” criteria discussed previously (which focus primarily on such elements as common ownership and control, financial integration, and location), and would also incorporate existing criteria included in the State Operations Manual and in Survey and Certification Letters into a single

regulation. We also propose to make a number of conforming changes elsewhere in subpart B of part 483 of the regulations (specifically §§ 483.10 and 483.12), as well as to other distinct part references that appear in parts 413 and 440.

At § 483.5, we would define a distinct part as a physically identifiable component of an institution (for example, a hospital, or a board and care facility) or institutional complex (for example, a hospital or continuing care retirement community that includes various subprovider units and occupies several buildings) that is certified as meeting the applicable statutory requirements for SNFs or NFs in sections 1819 or 1919 of the Act, respectively, as well as the participation requirements for long-term care facilities set forth in subpart B of part 483. A SNF or NF distinct part may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are located in the same physical area immediately adjacent to the institution’s main buildings, other areas and structures that are not strictly contiguous to the main buildings but are within close proximity of the main buildings, and any other areas that we determine, on an individual basis, to be part of the institution’s campus. A distinct part must include all of the beds within the designated area, and cannot consist of a random collection of individual rooms or beds that are scattered throughout the physical plant.

In addition, we would set forth a number of specific criteria for use in determining whether a SNF or NF can be considered a distinct part of a larger institution, as follows:

- The SNF or NF must be operated under common ownership and control (that is, common governance) by the institution of which it is a distinct part, as evidenced by the following:

- (1) The SNF or NF is wholly owned by the institution of which it is a distinct part;

- (2) The SNF or NF is subject to the by-laws and operating decisions of a common governing body;

- (3) The institution of which the SNF or NF is a distinct part has final responsibility for the distinct part’s administrative decisions and personnel policies, and final approval for the distinct part’s personnel actions; and

- (4) The SNF or NF functions as an integral and subordinate part of the institution to which it is based, with significant common resource usage of buildings, equipment, personnel, and services.

- The administrator of the SNF or NF reports to and is directly accountable to the management of the institution of which the SNF or NF is a distinct part.

- The SNF or NF must have a designated medical director who is responsible for implementing care policies and coordinating medical care, and who is directly accountable to the management of the institution of which it is a distinct part.

- The SNF or NF is financially integrated with the institution of which it is a distinct part, as evidenced by the sharing of income and expenses with that institution, and the reporting of its costs on that institution’s cost report.

- A single institution can have a maximum of only one distinct part SNF and one distinct part NF. (If an institution exercises the option to have both a distinct part SNF and a distinct part NF, its SNF and NF distinct parts may overlap entirely, partially, or not at all. Further, if the SNF and NF distinct parts partially overlap, the area of overlap would not represent a separate, dually-certified “SNF/NF.”)

- An institution cannot designate itself as a SNF or NF distinct part, but instead must submit a written request to us to determine if it may be considered a distinct part, along with documentation that demonstrates that it meets the criteria set forth above. The effective date of approval of a distinct part is the date that we determine all requirements (including enrollment with the fiscal intermediary) are met for approval, and cannot be made retroactive. If a distinct part is established without our notification and approval, CMS will determine the distinct part has not been appropriately designated as such from the date that the entity began its operation. CMS must approve all proposed changes in the number of beds in the approved distinct part. (Such modifications would be subject to the applicable requirements governing changes in bed size or location in SNFs and NFs, as set forth in section 2337 of the Provider Reimbursement Manual, Part 1 (CMS Pub. 15–1), and in section 3202 of the State Operations Manual (CMS Pub. 7).)

We note that our proposed definition of distinct parts does not represent an additional burden on SNFs; rather, it would simply add increased clarity and specificity to the process of determining distinct part status. We believe that establishing more definitive criteria in this area will actually help reduce the existing burden on SNFs by adding greater clarity and predictability to the process of determining a SNF’s distinct part status.