

Further, we note that the numerous requests that we have received for clarification of the distinct part criteria have arisen, in part, from a June 4, 1996, memorandum in which we reiterated our longstanding interpretation that sections 1819(a) and 1919(a) of the Act allow for a maximum of one distinct part SNF (and one distinct part NF) within a single institution. We issued this memorandum in response to an increasing number of situations involving the merger of two hospitals on separate campuses, each of which brings its own distinct part SNF into the merger. Under our policy of allowing only one distinct part SNF per institution, such a merger would result in the creation of a single distinct part SNF consisting of two noncontiguous units in different locations (as opposed, for example, to a distinct part consisting of noncontiguous wards, wings, or floors that are all located within the same building or campus).

In this proposed rule, we refer to such a configuration as a "composite distinct part." A composite distinct part could also be created when a hospital that already has a distinct part SNF acquires an additional nursing home that is not co-located on the hospital's campus. This, in turn, has raised a number of questions and concerns regarding the treatment of such entities under the survey and certification process, which we now propose to address as well.

Accordingly, we propose to establish certain additional criteria that would apply specifically to a composite distinct part SNF or NF of a hospital, or of a nonhospital organization such as a continuing care retirement community (CCRC). Under these criteria, a composite distinct part would be treated as a single distinct part of the institution to which it is based and, as such, would have only one provider agreement. It should be noted that in establishing criteria specific to composite distinct parts, it is not our intent to create a new category of nursing homes, but rather, simply to address certain survey and certification issues that arise from the use of this particular type of configuration. By explicitly recognizing composite distinct parts, we can help ensure that survey and other program oversight functions are coordinated and uniformly administered. Since the designation of a composite distinct part is not designed to supersede or replace existing policies, the use of a composite SNF or NF configuration is limited to facilities within the same State. Further, in order to ensure quality of care and quality of life for all residents, the constituent components of a composite distinct part would be required to meet

all of the participation requirements set forth in subpart B of part 483 independently in each location.

We also wish to take this opportunity to provide clarification regarding the logistics of applying the survey and certification process to a composite distinct part that consists of components in different locations. Specifically, we note that for such facilities, surveyors will place particular emphasis on the following requirements, which must be met independently in each location of the composite distinct part:

- Posting of resident's rights (§ 483.10(b));
- Posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups (§ 483.10(b)(7)(iii));
- Prominently displayed facility information (§ 483.10(b)(10));
- Readily available survey results (§ 483.10(g));
- Organized resident and family groups (§ 483.15(c));
- Equal access by residents to activities and social services (§ 483.15(b), § 483.15(f), and § 483.15(g));
- Except where waived, the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week (§ 483.30(b));
- Designating a person to serve as director of food services who receives frequently scheduled consultation from a qualified dietitian, unless a qualified dietitian is employed on a full-time basis (§ 483.35(a)); and
- The physical environment requirements, including life safety, and provisions for space and equipment in dining, health services, recreation and program areas, to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care (§ 483.15(h) and § 483.70).

We also propose to amend the regulations at § 483.12, to establish a resident's right to remain in (or return to) the same location of the composite distinct part to which he or she was originally admitted. To avoid any confusion regarding the distinct part criteria applicable to SNFs, we would amend the provider-based regulations at § 413.65(a)(1)(ii)(D) to include a cross-reference to the new distinct part criteria. Currently, the regulations at § 413.65(a)(1)(ii)(D) indicate only that provider-based determinations under these regulations do not apply to SNFs. We would amend § 413.65(a)(1)(ii)(D) by adding a parenthetical statement indicating that determinations for SNFs are made under the regulations at § 483.5.

We are also taking this opportunity to correct a typographical error that currently appears in the regulations text at § 483.20(k)(1) (regarding the required comprehensive care plan for long-term care facility residents), in which the word "describe" is misspelled as "describer."

## VII. Provisions of the Proposed Rule

In this proposed rule, we propose to make the following revisions to the existing text of the regulations:

- In § 409.20, we would make a technical correction to the cross-reference that appears in paragraph (c).
- We would revise § 483.5 to include specific definitions of the terms "distinct part" and "composite distinct part." In addition, we would make conforming changes elsewhere in subpart B of part 483 of the regulations, as well as in parts 413 and 440, and we would correct a typographical error that currently appears in the regulations text at § 483.20(k)(1).

## VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## IX. Regulatory Impact Analysis

### A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, (the Act) the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This proposed rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the