

same MEDPAR analog classifications, we applied the FY 2004 changes for a fully phased-in swing-bed population. We estimate that the overall impact on swing-bed facilities will be an increase in payments of approximately 2.9 percent, or \$6.4 million.

C. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to publish the payment rates for each new fiscal year in the **Federal Register**, and to do so prior to the August 1 that precedes the start of the new fiscal year. Accordingly, based upon the prescriptive nature of the statute, we are not pursuing alternatives.

D. Conclusion

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grants programs—health, Medicaid.

42 CFR Part 483

Grants programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

2. In § 409.20, the introductory text to paragraph (c) is revised to read as follows:

§ 409.20 Coverage of services.

(c) * * *
In § 409.21 through § 409.36—
* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

SUBPART E—PAYMENTS TO PROVIDERS

2. In § 413.65, paragraph (a)(1)(ii)(D) is revised to read as follows:

§ 413.65 Requirements for a determination that a facility or organization has provider-based status.

(a) *Scope and definitions.* (1) *Scope.*
(ii) * * *
(D) Skilled nursing facilities (SNFs) (determinations for SNFs are made in accordance with the criteria set forth in § 483.5 of this chapter).
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PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Definitions

2. In § 440.40, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental disease), EPSDT, and family planning services and supplies.

(a) * * *
(1) * * *
(ii) * * *
(A) A facility or distinct part (as defined in § 483.5(b) of this chapter) that is certified to meet the requirements for participation under subpart B of part 483 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility services and making payments for services under the plan; or
* * * * *

2. In § 440.155(c), the introductory text is revised to read as follows:

§ 440.155 Nursing facility services, other than in institutions for mental diseases.

(c) “Nursing facility services” may include services provided in a distinct part (as defined in § 483.5(b) of this chapter) of a facility other than a nursing facility if the distinct part (as defined in § 483.5(b) of this chapter)—
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PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

2. Section 483.5 is revised to read as follows:

§ 483.5 Definitions.

(a) *Facility defined.* For purposes of this subpart, *facility* means a skilled nursing facility (SNF) that meets the requirements of sections 1819 (a), (b), (c), and (d) of the Act, or a nursing facility (NF) that meets the requirements of sections 1919 (a), (b), (c), and (d) of the Act. “Facility” may include a distinct part of an institution (as defined in paragraph (b) of this section and specified in § 440.40 and § 440.155 of this chapter), but does not include an institution for the mentally retarded or persons with related conditions