

(ii) Classify the inpatient rehabilitation facility as an inpatient hospital that is subject to the conditions of subpart C of this part and is paid under the prospective payment systems specified in § 412.1(a)(1)."

Section 412.604(b) Inpatient Rehabilitation Facilities Subject to the Prospective Payment System

Section 412.604(b) states that, "subject to the special payment provisions of § 412.22(c), an inpatient rehabilitation facility must meet the general criteria set forth in § 412.22 and the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in § 412.23(b), § 412.25, and § 412.29 for exclusion from the inpatient hospital prospective payment systems specified in § 412.1(a)(1)." The general criteria set forth in § 412.22 and the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in § 412.23(b), § 412.25, and § 412.29 are under subpart B of part 412 of the regulations. In the August 7, 2001 final rule implementing the IRF PPS, we did not make any changes to the exclusion criteria and requirements to be classified as an IRF under subpart B of part 412. Since the implementation of the IRF PPS, a number of questions have been raised on the application of some of these requirements and the necessity of other criteria. Below, we will discuss each requirement as it relates to the classification of an IRF.

A. Background of Subpart B Provisions

Section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) amended section 1886 to the Act that established a PPS for acute care inpatient hospital services for cost reporting periods beginning on or after October 1, 1983. Under section 1886(d)(1)(B) of the Act, several types of hospitals and units of hospitals are excluded from the inpatient hospital PPS. Sections 1886(d)(1)(B)(ii) and 1886(d)(1)(B) of the Act specify that rehabilitation hospitals and rehabilitation units of hospitals (as defined by the Secretary) are excluded from the inpatient PPS.

Extensive discussion and public comments on developing the criteria under which a hospital or unit of a hospital can be excluded from the inpatient PPS as an IRF began with the September 1, 1983 publication of the interim final rule with comment period in the **Federal Register** (48 FR 39752). (That interim final rule discussed the provisions necessary to implement section 1886 of the Act.) On January 3, 1984, we published a final rule (49 FR 234) that responded to public comments

on the provisions of the September 1, 1983 interim final rule and established the initial set of criteria that must be met by a hospital or unit of a hospital seeking exclusion from the inpatient hospital PPS as an IRF. Since the publication of these earlier rules, the criteria to be an IRF have been revised and codified at subpart B of part 412 of the current Medicare regulations.

Section 412.20 Hospital Services Subject to the Prospective Payment Systems

In the August 7, 2001 final rule, we added § 412.20(b) stating that covered inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meet the conditions of § 412.604 are paid under the PPS described in subpart P of this part.

In this proposed rule, we are proposing to redesignate current § 412.20(b) as paragraph (b)(1) of § 412.20 and add paragraph (b)(2) to ensure that inpatient hospital services will not be paid under the IRF PPS if the services are paid by a health maintenance organization (HMO) or competitive medical plan (CMP) that elects not to have CMS make payments to an IRF for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees under part 417 of this chapter. This proposed provision is similar to the provision at § 412.20(b)(3) that prohibits payments under the acute care hospital PPS for similar HMO or CMP services.

Section 412.22 Excluded Hospitals and Hospital Units: General Rules

Section 412.22(h) describes the requirements to be a satellite facility that is excluded from the acute care hospital PPS. The following describes our proposal to eliminate the provision that limits the bed size of a satellite IRF.

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the acute care hospital inpatient PPS, a satellite of a hospital: (1) Effective for cost reporting periods beginning on or after October 1, 2002, is not under the control of the governing body or chief executive officer of the hospital in which it is located, and furnishes inpatient care through the use of medical personnel who are not under the control of the medical staff or chief medical officer of the hospital in which it is located; (2) must maintain admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available; (3) cannot commingle beds with beds of the

hospital in which it is located; (4) must be serviced by the same FI as the hospital of which it is a part; (5) must be treated as a separate cost center of the hospital of which it is a part; (6) for cost reporting and apportionment purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (7) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as the hospital of which it is a part. In addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the acute care hospital inpatient PPS. Lastly, the total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital (other than a children's hospital) that was excluded from the acute care hospital inpatient PPS for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

In § 412.22(h)(1), we define a satellite as "a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital." Satellite arrangements exist when an existing hospital that is excluded from the acute care hospital inpatient PPS and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e) shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 acute care hospital inpatient PPS final rule (64 FR 41532–41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the acute care hospital inpatient PPS.

In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Pub. L. 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the IRF was established. The target amount limit for an IRF with a cost reporting period beginning before October 1, 1997 was set at the 75th percentile of the target amounts of IRFs, as specified in § 413.40(c)(4)(iii), updated to the applicable cost reporting period. For IRFs with a cost reporting period beginning on or after October 1, 1997, under section 4416 of Pub. L. 105–33, the payment amount for the hospital's