

reasonable cost. Section 4004(b)(2) of Pub. L. 101–508 sets forth the conditions that a hospital must meet to receive payment on a reasonable cost basis under section 4004(b)(1).

## 2. Continuing Education Issue for Nursing and Allied Health Education

Since publication of the January 12, 2001 final rule on nursing and allied health education, we have encountered questions concerning the substantive difference between provider-operated *continuing education* programs for nursing and allied health education (which would *not* be reimbursable under Medicare on a reasonable cost basis) and provider-operated approved programs that are eligible to receive Medicare reasonable cost payment. In that final rule, we stated that Medicare would generally provide reasonable cost payment for “programs of long duration designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing or occupational therapy. This is contrasted with a continuing education program of a month to a year in duration in which a practitioner, such as a registered nurse, receives training in a specialized skill such as enterostomal therapy. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs and in improving the level of patient care in a provider, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with special skills. Further distinction can be drawn between this situation and one in which a registered nurse undergoes years of training to become a CRNA. For these reasons, the costs of continuing education training programs are not classified as costs of approved educational activities that are passed-through and paid on a reasonable cost basis. Rather, they are classified as normal operating costs covered by the prospective payment rate or, for providers excluded from the IPPS, as costs subject to the target rate-of-increase limits” (66 FR 3370).

Accordingly, upon publication of the final rule, we revised § 413.85(h)(3) to include continuing education programs in the same category as “educational seminars and workshops that increase the quality of medical care or operating efficiency of the provider.” Costs associated with continuing education programs, as stated above, are recognized as normal operating costs and are paid in accordance with applicable principles.

Prior to the issuance of the May 19, 2003 proposed rule, we received an

inquiry requesting further clarification on what is meant by continuing education. It is our belief that provider-operated programs that do not lead to any specific certification in a specialty would be classified as continuing education. In the proposed rule (68 FR 27210), we stated that our use of the term “certification” does not mean certification in a specific skill, such as when an individual is certified to use a specific piece of machinery or perform a specific procedure. Rather, we stated that we believe certification means the ability to perform in the specialty as a whole.

Although, in the past, we believe we have allowed hospitals to be paid for operating a pharmacy “residency” program, in the May 19, 2003 proposed rule, we stated that it has come to our attention that those programs do not meet the criteria for approval as a certified program. Once individuals have finished their undergraduate degree in pharmacy, there are *some* individuals who go on to participate in 1-year hospital-operated postundergraduate programs. It is our understanding that many individuals complete the 1-year postundergraduate program practice pharmacy inside the hospital setting. However, we also understand that there are pharmacists who *do not* complete the 1-year postundergraduate program, but have received the undergraduate degree in pharmacy, who also practice pharmacy inside the hospital setting. Because pharmacy students need not complete the 1-year residency program to be eligible to practice pharmacy in the hospital setting, the 1-year programs that presently are operated by hospitals would be considered continuing education, and therefore, would be ineligible for pass-through reasonable cost payment.

We stated that we understood that *all* individuals who wish to be nurses practicing in a hospital must either complete a 4-year degree program in a university setting, a 2-year associate degree in a community or junior college setting, or a diploma program traditionally offered in a hospital setting. Since participants that complete a provider-operated diploma nursing program could not practice as nurses without that training, the diploma nursing programs are *not* continuing education programs and, therefore, may be eligible for pass-through treatment.

Because of the apparent confusion concerning the distinction between continuing education programs and approved education programs in the context of reasonable cost pass-through payments for nursing and allied health

education activities, in the May 19, 2003 proposed rule, we proposed to revise § 413.85(h)(3) to state that educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to certification required to practice or begin employment in a nursing or allied health specialty, would be treated as educational activities that are part of normal operating costs. We also proposed to add a conforming definition of “certification” for purposes of nursing and allied health education under § 413.85(c) to mean “the ability to practice or begin employment in a specialty as a whole.”

*Comment:* A large number of commenters responded to our proposal to clarify that, effective October 1, 2003, activities that do not lead to certification required to practice or begin employment in a nursing or allied health specialty would be treated as educational activities (continuing education) that are part of normal operating costs, and not as approved programs that are eligible for reasonable cost reimbursement. Many commenters strongly disagreed with the section of the proposed rule that included clinical pastoral education (CPE) as continuing education and stated that CMS must have been badly misinformed when writing the proposed rule. The commenters argued that CPE is a rigorous and structured education program accredited by the Association for Clinical Pastoral Education, Inc. (ACPE). The commenters stressed that, in varying amounts, CPE is a requirement for graduation for the master of divinity degree and for professional certification by the Association of Professional Chaplains (APC) as a health care chaplain, or as a CPE supervisor. Many commenters also noted prior Provider Reimbursement Review Board (PRRB) rulings that recognized chaplaincy as an allied health discipline, and asserted that hospitals that receive Medicare reasonable cost pass-through payment for CPE do so for the purpose of their professional CPE programs, not as continuing education for individuals already qualified to practice in hospital chaplaincy. Many commenters mentioned that the Joint Commission on Accreditation of Healthcare Organizations also recognizes chaplains as allied health professionals and considers them “primary care providers.” Similarly, commenters referred to various studies that have