

the program, employs the teaching staff, and provides and controls both clinical training and classroom instruction (where applicable). While a hospital may serve as the site for a CPE internship, such training is provided to satisfy curriculum requirements of a theological school, which grants the master degree upon completion of the internship. While the hospital might incur training costs and employ the supervising faculty, it would not ordinarily meet the other "provider-operated" criteria concerning controlling the curriculum and providing both the didactic and clinical training necessary for the degree. Thus, a CPE internship, or any other CPE training that is a requirement for a degree, whether it is undergraduate, graduate, or doctoral, is not eligible for Medicare reasonable cost pass-through payment.

Secondly, a CPE residency consisting of 1,600 hours of training could be a provider-operated program and could also lead to certification and the ability to be employed in a new or different capacity. Specifically, a CPE residency consisting of approximately 1,600 hours of training leads to board certification in chaplaincy, and, as we understand it, most JCAHO-accredited hospitals generally only employ board-certified chaplains. In consideration of these facts, the costs of CPE training programs that meet the requirements under § 413.85, including accreditation by a nationally recognized accrediting body, direct operation by a provider, and lead to certification that is generally a requirement for employment in a particular specialty, may be eligible for Medicare reasonable cost pass-through payment.

In the May 19, 2003 proposed rule (68 FR 27210), we proposed to revise the regulations at § 413.85(h)(3) to state that activities treated as normal operating costs include "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." We 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." However, it is apparent from the comments we received that our proposed definition of "certification" was not clear. Some commenters believed we intended,

through the proposed definition, to allow pass-through payments for the costs of a program that would only enhance an individual's set of skills. However, that was not our intent. We believe it would have been more appropriate to use the word "and" instead of the word "or", to further emphasize that pass-through payment would only apply to activities that enable an individual to practice *and* begin employment in a specialty, but would *not* apply to activities that serve to add to or to enhance an individual's current skill set.

In addition, based on the comments received, we understand that there may be several distinct levels of training in a given health profession, and each level of training may be a requirement in order for an individual to work in a new capacity or "specialty" in that profession, but *not* a requirement to practice or begin employment in the specialty "as a whole." Since a second level of training is not required to begin practicing in a profession, under the proposed definition, we would not have been able to allow for pass-through payments for a second (or potentially a third) level of training. Therefore, we understand that inclusion of the words "as a whole" in the proposed definition of "certification" was misleading. Consequently, where a subsequent level of training is a requirement to practice in a new specialty in a given profession, pass-through payment may be made for the subsequent level of training.

Finally, we have concluded that it is not necessary to include a specific definition of "certification" at § 413.85. In this final rule, we are deleting the proposed definition of "certification" from § 413.85(c), and amending § 413.85(h)(3) by removing the words "certification required" and inserting the words "the ability." We are also changing the word "or" to "and". Specifically, we are amending the proposed regulations at § 413.85(h)(3) to state that activities treated as normal operating costs include "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 the ability to practice and begin employment in a nursing or allied health specialty."

Our view of a "specialty" in the nursing and allied health education context is based on what the industry views as the standard of practice in a specific area within a profession. The training required to allow a person to serve in the "specialty" is tailored to the

skill level and context that an individual is expected to use in that "specialty."

Consistent with what we stated in the proposed rule, Medicare reasonable cost pass-through payments are only provided for programs that, according to industry norms, qualify an individual to be employed in a specialty in which the individual could not have been employed before completing a particular education program. Given the confusion expressed by commenters, we recognize the need to specify how we will determine whether completion of a particular education program enables an individual to be employed in a specialty. We will use "industry norms" as the standard to determine whether participation in a specialty enables an individual to be employed in a capacity that he or she could not have been employed without having first completed a particular education program. We are defining "industry norm" to mean that more than 50 percent of hospitals in a random, statistically valid sample require the completion of a particular training program before an individual may be employed in a specialty. (We understand that, in some instances, due to the unique staffing circumstances faced by many smaller hospitals, inclusion of small hospitals in the sample would introduce factors that are not typically representative of the industry as a whole and would skew the results inappropriately. In such a case, if appropriate, we would consider excluding hospitals with less than 100 beds, which would still retain over 75 percent of all hospitals in the universe).

Based on comments received, we believe that it is the "industry norm" to require a CPE residency and board certification for employment as a hospital chaplain. Since it is currently the "industry norm" for hospitals to employ only board-certified chaplains, and since completion of approximately 1,600 hours of CPE training is a requirement to practice and begin employment in hospital chaplaincy, we view hospital chaplaincy as a "specialty" of pastoral counseling. Consequently, a hospital that operates a CPE residency may be eligible for reasonable cost pass-through payment.

Specifically, assuming all requirements under § 413.85 are met, Medicare reasonable cost pass-through payments may only be made to hospitals for CPE hours that are *not* prerequisites for *any* academic degree, *and* are provided to students in order to obtain board certification in hospital chaplaincy. A hospital may not receive reasonable cost payment for any costs