

As we stated in the preamble language quoted above: "a program operated by an educational institution that is related to the provider through common ownership or control would not be considered to meet the criteria for provider operated" (66 FR 3363).

We explained that we understood that some hospitals may have interpreted the preamble language that stated, "if the provider demonstrates that the educational institution it has established is wholly within the provider's control and ownership and that the provider continues to incur the costs of both the classroom and clinical training portions of the program, the costs would continue to be paid on a reasonable cost basis" (*Ibid.*), to mean that hospitals that establish wholly owned subsidiary colleges or educational institutions would continue to receive Medicare reasonable cost payment if the hospitals incur the costs of the classroom instruction and clinical training. Accordingly, although we proposed to clarify in the proposed rule that, in general transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does not necessarily mean that the programs continue to meet our provider-operated criteria under § 413.85(f), we believed it would be unfair to recoup Medicare payments that have already been made to such a hospital that meets *this very narrow fact pattern*. Therefore, we proposed to add a *limited* exception to § 413.85 to reflect the unique circumstances of such a hospital.

First, we proposed that, for portions of cost reporting periods occurring on or before October 1, 2003, Medicare would not recoup reasonable cost payment from such a hospital that has received pass-through payments for the nursing or allied health education program(s) where the program(s) had originally been operated by the hospital, and then operation of the program(s) had been transferred by the hospital to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the hospital had continuously incurred the costs of both the classroom and clinical training portions of the programs at the educational institution.

Second, since we believed that such a hospital's programs were no longer provider-operated, and therefore, should not continue in the future to receive *full* reasonable cost payments for the clinical and classroom costs of programs that are now operated by the wholly owned subsidiary educational

institution, we proposed that, for portions of cost reporting periods occurring on or after October 1, 2003, such a hospital would continue to receive reasonable cost payments for the clinical training costs incurred by the hospital for the program(s) described above that were previously provider operated. However, we further proposed that, with respect to classroom costs, only those classroom costs incurred by the hospital for the courses that were paid by Medicare on a reasonable cost basis and were included in the hospital's provider-operated program(s) could continue to be reimbursed on a reasonable cost basis. That is, we proposed that Medicare would pay on a reasonable cost basis for the classroom costs associated with the courses provided as part of the nursing and allied health education programs (for example, the courses relating to the theory and practice of the particular nursing and allied health discipline(s)) that were offered by the hospital when the hospital was the direct operator of the program(s).

In proposing that, effective for portions of cost reporting periods occurring on or after October 1, 2003, we would only continue to pay on a reasonable cost basis for classroom costs associated with the courses that relate to the theory and practice of the particular nursing or allied health discipline(s) that were offered by the hospital when the hospital was the direct operator of the program(s), and *not* for additional classes needed to meet degree requirements provided as part of the nursing or allied health education programs, we did assume, as a commenter suggested, that diploma nursing programs typically only include courses related to the theory and practice of nursing. However, regardless of whether diploma programs include additional general courses other than "core" nursing courses, we continue to believe it is more appropriate to pay a hospital that meets the limited exception that allows continued payment for only those costs associated with courses included in the program(s) when the hospital was still the direct operator of the program(s). If, in fact, a hospital that meets the limited exception currently offers the same courses that it had offered when it was still the direct operator of the programs, we would continue to pay for the classroom costs associated with those courses, even if those courses do not relate directly to the theory and practice of the nursing or allied health program(s). However, if new courses, whether or not they are nursing-related

or allied health-related course, have been added after the operation of the program(s) was transferred to a wholly owned subsidiary educational institution, we would not pay on a reasonable cost basis for the classroom costs associated with those new courses, effective October 1, 2003. If the courses offered currently are the same as the courses offered prior to transfer of the programs to the wholly owned subsidiary, but, for example, the names of the courses have changed, or there have been course substitutions, we would evaluate each course on an individual basis to determine whether we would continue to allow reasonable cost payment for those courses. All other things being equal (that is, after adjusting for inflation and changes in enrollment), our intent is not to pay more on a reasonable cost basis as of October 1, 2003, for classroom costs to such a hospital than we had paid to the hospital when the hospital was still the direct operator of the program(s).

In response to the comments we received that urged us not to restrict the number of courses for which we would provide reasonable cost reimbursement due to concerns about evolving accreditation requirements and the existing nursing shortage, we emphasize again that this proposal is not at all broad in scope. Rather, based on the information we currently have available to us, we believe this provision would have a limited application. Therefore, we do not believe that our proposal will aggravate the nursing shortage or adversely affect hospitals that otherwise meet the requirements for reasonable cost payment under § 413.85 but add courses to their programs. Similarly, we do not believe that the effective date of October 1, 2003, will cause hardship to other providers that are currently in the process of transitioning their programs to educational organizations, since the proposed changes would only apply to a provider that had *already* created its own educational institution. We also note that, as indicated above, programs that transition in some respect to educational institutions created by providers could possibly be considered "provider-operated" under § 413.85(f) and, if all other requirements are met, could qualify to receive reasonable cost reimbursement.

Comment: One commenter disagreed with our statement in the proposed rule (68 FR 27211) that " * * * transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does not necessarily mean that the programs continue to meet our provider-operated