

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 first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii)(A) and (B), could not exceed 110 percent of the national median of target amounts of IRFs for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the first cost reporting period in which the IRF receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals (including IRFs), governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, the facility would be paid under the IPPS. Therefore, while an excluded hospital or unit could "transfer" bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (see 64 FR 41532–41533, July 30, 1999), the hospital will not be paid as a hospital excluded from the IPPS. However, no similar limitation was imposed with respect to the number of total beds in excluded hospitals and units and satellite facilities of those excluded hospitals and units established after October 1, 1997, since those excluded hospitals and units were subject to the lower payment limits of section 4416 of Pub. L. 105–33, and would, therefore, not benefit from the higher payment cap on target amounts under § 413.40(c)(4) by creating a satellite facility.

On March 22, 2002, we published a proposed rule in the **Federal Register** (67 FR 13416) that set forth the proposed Medicare PPS for long-term care hospitals (LTCHs). Discussion of the comments received on that LTCH proposed rule and our responses were published in a final rule on August 30, 2002 **Federal Register** (67 FR 55954). Specific comments received were discussed on page 56013 of the LTCH final rule that urged us to eliminate the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 IRFs since the applicable PPS is fully phased in. The rationale for the bed-number criteria provision at § 412.22(h)(2)(i) was the potential for circumventing the PPS by creating a satellite location that could have their payment based on a higher TEFRA target amount cap. However, once an IRF's payment under the IRF PPS does not include a TEFRA-based payment (referred to as the facility-specific payment under the transition period described in § 412.626) and is based on 100 percent of the Federal prospective payment rate, we believe that the need for the bed-number criteria does not exist because IRF prospective payments will be the same regardless of when the IRF was established. Because all IRFs now will be paid 100 percent of the Federal prospective payment rates, in the May 16, 2003 proposed rule, we proposed to eliminate the bed-number criteria by revising § 412.22(h) relating to freestanding satellite IRFs. We also proposed to eliminate the bed-number criteria for IRF satellite units of a hospital by revising § 412.25(e) to conform to the proposed change in § 412.22(h).

*Comment:* We received a number of comments in support of the proposed elimination of the bed-number criteria. However, one commenter was concerned with the increase in paperwork burden.

*Response:* We are adopting the proposed elimination of the bed-number criteria by revising § 412.22(h) for freestanding IRFs and § 412.25(e) for IRF units. The commenter was not specific on how this change would increase paperwork burden. We believe that this change makes the policy of creating a satellite IRF less restrictive and less burdensome to verify that the bed-number criteria were met. Accordingly, we do not believe that this change increases paperwork burden and, thus, we did not include an estimate of time associated with eliminating the bed-number criteria in the Collection of Information section of the May 16, 2003 proposed rule.

#### 4. Technical Changes

##### a. *Excluded Rehabilitation Units:* Additional Requirements:

Under § 412.29(a), an IRF unit must have met either the requirements for new units or converted units under § 412.30. Section 412.29(a)(2) contains an incorrect reference to the requirements for converted units as "§ 412.30(b)." The correct reference to the requirements for converted units is § 412.30(c). Accordingly, we proposed to make a technical correction by changing the reference in § 412.29(a)(2) to state "Converted units under § 412.30(c)."

*Comment:* We did not receive any comments concerning this proposed technical correction.

*Response:* We are adopting the proposed technical correction to § 412.29(a)(2) to state "Converted units under § 412.30(c)."

##### b. *Exclusion of New Rehabilitation Units and Expansion of Units Already Excluded:*

Under § 412.30(b)(2), a hospital that seeks exclusion of a new IRF unit may provide written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2). Section 412.30(b)(3) contains an incorrect reference to the required written certification described in "paragraph (a)(2)" of this section. The correct reference to the written certification is described in paragraph (2) of § 412.30(b). Accordingly, we proposed to make a technical correction by changing the current reference to § 412.30(a)(2) in § 412.30(b)(3) to state "The written certification described in paragraph (b)(2) \* \* \* ." In the proposed rule, we incorrectly stated that the reference to § 412.23(a)(2) was in § 412.23(b)(3). It should have read that the reference to § 412.30(a)(2) was in § 412.30(b)(3).

*Comment:* We did not receive any comments concerning this proposed technical correction.

*Response:* We are adopting the proposed technical correction to § 412.30(b)(3) to state "The written certification described in paragraph (b)(2) \* \* \* ."

Section 412.30(d)(1) defines new bed capacity for the purposes of expanding an existing excluded IRF unit. Section § 412.30(d)(2)(i) contains an incorrect reference to the definition of new bed capacity under "paragraph (c)(1)" of this section. The correct reference to the definition of new bed capacity is paragraph (d)(1). Accordingly, we proposed a technical correction to change the current reference to