

§ 424.13(b), a physician may certify or recertify that the patient needs to continue to be hospitalized in the IRF. The effect of the physician's certification or recertification is that under Medicare the patient is not considered discharged until the patient is formally released from the IRF.

In consideration of what can occur when discharge is defined as being when the inpatient stops receiving Medicare-covered Part A inpatient rehabilitation services, in the May 16, 2003 proposed rule, we proposed to revise the definition of "discharge" under § 412.602 by removing the phrase "(2) The patient stops receiving Medicare-covered Part A inpatient rehabilitation services, unless the patient qualifies for continued hospitalization under § 424.13(b) of this chapter; or". Under the proposed revised definition, discharge would mean a Medicare patient in an inpatient rehabilitation facility is considered discharged when (1) the patient is formally released from the inpatient rehabilitation facility; or (2) the patient

dies in the inpatient rehabilitation facility.

Comment: We received a comment requesting that CMS not revise the definition of discharge as specified in § 412.503 that applies to patients in an LTCH similar to how we are revising the definition of a discharge from an IRF.

Response: The commenter's concern did not relate to our proposed change to the definition of discharge in the IRF context and we are adopting the proposed change without modification.

G. Waiver of the Penalty for Late Transmittal of the IRF-PAI Data

Section 412.614(c), "transmission dates," states that the admission and discharge assessment data must be transmitted together. The discharge assessment is completed after the admission assessment has been completed. Therefore, the date when the IRF-PAI data must be transmitted is determined by when the IRF-PAI discharge assessment is completed.

Section 412.610(d) specifies that after the discharge assessment has been completed, the data must be entered

into the electronic version of the IRF-PAI, a process which § 412.602 defines as encoding the data. Section 412.610(d) specifies that the IRF has 7 calendar days to encode the discharge assessment. Section 412.614(d)(2) specifies that, in order for the IRF-PAI data not to be considered as having been transmitted late, the IRF-PAI data must be transmitted to us no later than 10 calendar days from the date specified in § 412.614(c).

The date specified in § 412.614(c) is the 7th calendar day of the applicable encoding time period specified in § 412.610(d). The 7th calendar day of the applicable encoding date specified in § 412.610(d) is the end of the discharge assessment encoding time period because none of the data can be transmitted until the discharge assessment has been encoded. The following example, which is very similar to the Chart 3 on page 41332 of the August 7, 2001 final rule (66 FR 41316), is intended to clarify when CMS will determine that the IRF-PAI data were transmitted late.

CHART 1-2.—EXAMPLE OF APPLYING THE PATIENT ASSESSMENT INSTRUMENT DISCHARGE ASSESSMENT AND TRANSMISSION DATES

Assessment type	Discharge date	Assessment reference date	IRF-PAI completed by	IRF-PAI encoded by	IRF-PAI data transmitted by	Date when IRF-PAI data transmission is late
Discharge Assessment	10/16/03	10/16/03	10/20/03	10/26/03	11/01/03	11/12/03*

*Or any day after 11/12/03.

If IRF-PAI data are transmitted later than 10 calendar days from the transmission date specified in § 412.614(c), § 412.614(d)(2) specifies that we will assess a penalty by deducting 25 percent from the CMG payment that is associated with the IRF-PAI data that were transmitted late. However, we believe that an IRF may encounter an extraordinary situation, which is beyond its control, and that extraordinary situation could render the IRF unable to comply with § 412.614(c). The IRF must fully describe in the appropriate inpatient's clinical record, or by use of another documentation method as selected by the IRF, the extraordinary situation which the IRF encountered that resulted in the IRF being unable to comply with § 412.614(c). Although an IRF may believe that the facility has encountered an extraordinary situation, the IRF's belief does not mean that CMS is obligated to also automatically determine that the situation was of an extraordinary nature.

CMS has the discretion to determine whether the situation described by the IRF is extraordinary. An extraordinary situation may be, but does not have to be, due to the occurrence of an unusual event. Examples of unusual events include, but are not limited to, fire, flood, earthquake, or other similar incidents that inflict extensive damage to an IRF.

Another example of an extraordinary situation is the inability of an IRF to transmit any IRF-PAI data for an extended time period, because during that entire time period there was a problem with the data transmission system that was beyond the control of the IRF. An example of a data transmission system problem that is beyond the control of the IRF is the inability of an IRF to transmit its IRF-PAI data because the computer used by CMS to receive and process the data is malfunctioning.

A further example of a data transmission system problem that is beyond the control of the IRF is the existence of a flaw in the software that

was distributed by CMS to IRFs, or a flaw in the software specifications made available by CMS to vendors that prevent the IRF from transmitting its IRF-PAI data. In addition, an extraordinary situation may include a situation in which a facility has correctly followed CMS policies and procedures in order to be classified as an IRF and obtain an IRF provider number, but has experienced a delay in attaining an IRF provider number.

In light of these possibilities, in the May 16, 2003 proposed rule, we proposed to add a new § 412.614(e) to specify that CMS may waive the penalty specified in § 412.614(d) when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with § 412.614(c).

We also proposed that "only CMS can determine if a situation encountered by an IRF is extraordinary and qualifies as a situation for waiver of the penalty specified in § 412.614(d)(2) of this