

more precise guidance to providers and State licensure and certification agencies. This guidance will assist providers in understanding the criteria that govern the financial and organizational structure of these entities to facilitate the Medicare and Medicaid approval process.

Further, we proposed adopting certain additional criteria that would apply specifically to what we define in the rule as a composite distinct part SNF and/or NF. Under these criteria, a composite distinct part would be treated as a single distinct part of the institution of which it is a distinct part, and, as such, would operate under a single provider agreement with a single provider number. Further, to ensure quality of care and quality of life for all residents, we proposed that the composite distinct part would be required to meet all of the participation requirements set forth in subpart B of part 483 independently in each location. We also proposed amending § 483.10 and § 483.12 to afford certain protections and rights to residents located in a composite distinct part SNF and/or NF.

Comment: A commenter believed that the new criteria for distinct part certification were intended to determine if a facility was provider-based and a distinct part of a larger facility. Several other commenters believe that if a SNF meets the requirements of § 413.65 (provider-based), it is automatically considered a distinct part of the hospital to which it claims to be based.

Response: The distinct part certification requirements set forth in § 483.5 are separate and apart from the requirements to be considered "provider based" as set forth in § 413.65. Indeed, SNFs are no longer required to request or be approved for provider-based status and are not subject to the provider-based regulations in § 413.65. Moreover, simply meeting the provider-based requirements, which, as we have previously stated do not apply to SNFs, does not translate to automatically meeting the distinct part requirements. Accordingly, we will evaluate each request for approval of a distinct part SNF or NF against the criteria outlined in § 483.5.

Comment: Several facilities have questioned whether the receipt of a higher rate of Medicaid reimbursement is a justifiable reason for us to determine that a particular nursing facility is a part of a distinct part composite.

Response: We do not consider it an efficient use of public monies to approve a composite distinct part or, for that matter, a distinct part for the sole

purpose of enhancing its Medicaid payment.

Comment: Several commenters recommend that we eliminate the condition that beds cannot be scattered throughout the facility.

Response: The Committee Report that accompanied the original Medicare legislation (Sen. Fin. Comm. Rep. No. 404, 89th Congress, 1st Session 31–32 (1965)) stated that a posthospital extended care facility could be an institution such as a skilled nursing home or a distinct part of an institution, such as a ward or wing of a hospital or a section of a facility another part of which might serve as an old age home. The regulations at 42 CFR 440.155 describe a distinct part as " * * * an identifiable unit such as an entire ward or contiguous ward, a wing, floor or building." Thus, we believe that there is no legal basis for permitting the scattering of beneficiaries throughout the institution's physical plant. Also, the scattering of beneficiaries throughout the physical plant would make the survey and certification of SNFs and NFs a much more burdensome and complicated process. Finally, it would mean that we would be applying our rules to residents or beds *per se* rather than to providers. We apply our requirements to facilities, not beds or residents. Thus, the institution must clearly designate the area that is the proposed distinct part SNF and/or NF.

Comment: Several commenters suggested that we allow facilities to designate the number of beds to be approved and to identify those beds anywhere within the facility for cost accounting or survey purposes. The commenters add that in the approval process of a SNF distinct part, the facility would demonstrate to us the cost accounting methodology for a Medicare distinct part. Regulations for cost accounting for a Medicaid distinct part would be at the discretion of the State. The commenters indicate that, during the onsite survey, the facility would disclose the beds/rooms that the facility has designated as comprising the SNF or NF distinct part.

Response: We agree that an institution or institutional complex should be allowed to identify the number of beds to be approved in accordance with our policy. We also agree that an institution or institutional complex be allowed to identify the building(s) or identify parts of building(s) (that is wings, wards, or floors) where the distinct part is located as long as the location comports with the distinct part rules. However, for both cost accounting and survey and certification purposes, we must know in

advance of the initial or recertification surveys, the number of beds in the distinct part and the location of the distinct part with respect to the entire complex. This assures that the surveying entity, either the State survey agency or our regional office, can allocate adequate resources to conduct the survey and then proceed directly to the distinct part to begin the survey. It also provides for adequate cost information from the provider's records to support payments made for services furnished to beneficiaries. If there are changes in the number of distinct part beds and/or their location in an approved distinct part facility, we must approve those changes in accordance with established policy.

Comment: One commenter states that we are forcing nursing homes to transfer residents to different rooms based on the certification of beds.

Response: We disagree with the commenter. It is the nursing home, not the Medicare or Medicaid program, that decides in which room an individual will be placed. As noted previously, facilities are certified, not beds. An individual, in selecting a nursing home for Medicare or Medicaid purposes, may choose any facility he/she likes provided the selected facility chooses to accept him or her. If a nursing home wants to place a person anywhere in the home, the facility could choose to have the entire nursing home participate in both Medicare and Medicaid.

Comment: Several commenters expressed concern with the "close proximity" requirements set forth in the definition of a distinct part relating to location. Another commenter even recommended that the definition of a distinct part exclude reference to location. Instead, the commenter suggested that the definition be revised to include being adjacent to, on the same campus of, or on multiple campuses of an institution that meets all the criteria of ownership and management control mentioned in § 483.5(b)(2). Yet another commenter believes that the requirements for location required that the distinct part be located strictly in the main building and not be allowed to exist at another location that is part of the institution's campus.

Response: In the definition of a distinct part set forth in the proposed rule of May 16, 2003 (68 FR 26758), we stated that an SNF or NF distinct part may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are—