

prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to publish the payment rates for each new fiscal year in the **Federal Register**, and to do so before the August 1 that precedes the start of the new fiscal year. Accordingly, we are not pursuing alternatives.

#### D. Conclusion

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### List of Subjects

##### 42 CFR Part 409

Health facilities, Medicare.

##### 42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

##### 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

##### 42 CFR Part 440

Grants programs—health, Medicaid.

##### 42 CFR Part 483

Grants programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

##### 42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

##### 42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

#### PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

##### Subpart C—Posthospital SNF Care

■ 2. In § 409.20, the introductory text to paragraph (c) is revised to read as follows:

##### § 409.20 Coverage of services.

\* \* \* \* \*

(c) *Services not generally provided by (or under arrangements made by) SNFs.* In § 409.21 through § 409.36—

\* \* \* \* \*

#### PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

##### Subpart A—General Exclusions and Exclusion of Particular Services

■ 2. Section 411.15 is amended by:

■ A. Republishing the introductory text to the section and the paragraph (p)(2) introductory text.

■ B. Revising paragraph (p)(2)(xii).

##### § 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

\* \* \* \* \*

(p) *Services furnished to SNF residents.* \* \* \*

(2) *Exceptions.* The following services are not excluded from coverage, provided that the claim for payment includes the SNF's Medicare provider number in accordance with § 424.32(a)(5) of this chapter:

\* \* \* \* \*

(xii) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600; and, as

of January 1, 2004, by HCPCS codes A9522 and A9523.

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#### PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

**Authority:** Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

##### Subpart E—Payments to Providers

■ 2. In § 413.65, paragraph (a)(1)(ii)(D) is revised to read as follows:

**§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.**

(a) *Scope and definitions.* (1) *Scope.*

\* \* \*

(ii) \* \* \*

(D) Skilled nursing facilities (SNFs) (determinations for SNFs are made in accordance with the criteria set forth in § 483.5 of this chapter).

\* \* \* \* \*

##### Subpart J—Prospective Payment for Skilled Nursing Facilities

■ 3. In § 413.337, paragraph (d)(2) is revised to read as follows:

**§ 413.337 Methodology for calculating the prospective payment rates.**

\* \* \* \* \*

(d) *Annual updates of Federal unadjusted payment rates.*

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount. Beginning with fiscal year 2004, an adjustment to the annual update of the previous fiscal year's rate will be computed to account for forecast error. The initial adjustment (in fiscal year 2004) to the update of the previous fiscal year's rate will take into account the cumulative forecast error between fiscal years 2000 and 2002. Subsequent adjustments in succeeding fiscal years will take into account the forecast error from the most recently available fiscal year for which there is final data.

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