

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1262-P]

RIN 0938-AM72

Medicare Program; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the classification criterion, commonly known as the "75 percent rule," used to classify a hospital as an inpatient rehabilitation facility (IRF). This proposed rule would also modify and expand the medical conditions listed in the 75 percent rule regulatory requirements as well as lower the percentage of patients required to fall within one of the specified list of medical criteria.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 3, 2003.

ADDRESSES: In commenting, please refer to file code CMS-1262-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1262-P, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786-4597; or Pete Diaz, (410) 786-1235; or Nora Hoban, (410) 786-0675.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 (or toll-free at 1-888-293-6498) or by faxing to (202) 512-2250. The cost for each copy is \$10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Condition for Classification as an IRF Background

A. Overview of the Inpatient Rehabilitation Facility Prospective Payment System

Section 1886(j) of the Social Security Act (the Act) provides for the implementation of a prospective payment system (PPS) under Medicare for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit of a hospital (referred to as an inpatient rehabilitation facility (IRF)). Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act give the Secretary the discretion to define a rehabilitation hospital and unit. The regulations at 42 CFR 412.23(b), 412.25, and 412.29, specify the criteria for a provider to be classified as a rehabilitation hospital or rehabilitation unit. Hospitals and units meeting those criteria are eligible to be paid on a

prospective payment basis as an IRF under the IRF PPS.

Payments made under the IRF PPS cover inpatient operating and capital costs of furnishing covered intensive rehabilitation services (that is, routine, ancillary, and capital costs), but do not cover costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Covered intensive rehabilitation services include services for which benefits are provided under Medicare Part A (Hospital Insurance).

Payments under the IRF PPS are made on a per discharge basis. A patient classification system is used to assign patients in IRFs into case-mix groups (CMGs). The IRF PPS uses Federal prospective payment rates across distinct CMGs. We construct a majority of the CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (though some CMGs do not use cognitive status or age in their definition). We construct special CMGs to account for very short stays and for patients who expire during the IRF stay.

For each CMG, we develop relative weighting factors to account for a patient's clinical characteristics and expected resource consumption. Thus, the weighting factors account for the relative difference in resource use across all CMGs. Within each CMG, the weighting factors are "tiered" based on the estimated effect that the comorbidities from appendix C of the August 7, 2001 final rule (66 FR 41414) have on resource use.

The Federal prospective payment rates are established using a standard payment amount (also referred to as the budget neutral conversion factor). For each of the tiers within a CMG, we apply the relative weighting factors to the budget neutral conversion factor to compute the unadjusted Federal prospective payment rates.

Adjustments that account for geographic variations in wages (wage index), for the percentage of low-income patients, and for facilities located in a rural area are applied to the unadjusted Federal prospective payment rates. In addition, adjustments are made for early transfers of patients to other facilities, interrupted stays, and high-cost outliers (cases with usually extraordinarily high costs).

The regulations implementing the IRF PPS provisions are presently in 42 CFR part 412, subpart P. Regulations governing the requirements for classification of hospitals as IRFs are located in § 412.22, § 412.23, § 412.25, and § 412.29. Section 412.23(b)(2) is commonly known as the "75 percent