

2. Definitions and Terms (§ 403.702)

Under this section, we included definitions for terms or acronyms used in the rule. Those terms that were defined elsewhere within the text of the rule were not included under this section.

3. Conditions for Coverage (§ 403.720)

Under this section, we specified the 10 qualifying provisions as contained in section 1861(ss)(1) of the Act that a Medicare or Medicaid provider must satisfy to meet the definition of an RNHCI. While the requirements contained in sections 1861(ss)(1)(B) (lawful operation), (G) (ownership by or in a provider of medical services), and (H) (utilization review) of the Act were explicitly addressed in the Medicare Conditions of Participation before passage of the BBA '97, it is essential that a facility meet all 10 elements to qualify as an RNHCI for both the Medicare and Medicaid programs.

In addition to meeting the definition of an RNHCI, the facility must also meet conditions of coverage for RNHCI services as established under section 1821 of the Act. Specifically, section 1821(a) of the Act requires that as a condition for Part A Medicare coverage, the beneficiary must have a condition that would qualify under Medicare Part A for inpatient hospital services or extended care services furnished in a hospital or skilled nursing facility that is not an RNHCI. The beneficiary must also have a valid election in effect to receive RNHCI services.

The RNHCI may not accept a patient as a Medicare or Medicaid beneficiary after the sunset provision (§ 403.756) is implemented, unless the patient has an election in effect before January 1 of the year in which the sunset provision is implemented. A claim filed for payment for services furnished to a patient with no valid election in effect before January 1 of the year the sunset provision is implemented would be denied. We explain the circumstances in which the sunset provision would be triggered at § 403.750 of the regulations.

4. Valid Election Requirements (§ 403.724)

Under this section, we implemented section 1821(b) of the Act to address the issues involved in beneficiary election of RNHCI services. We specified the general requirements relating to the election and the election process as well as the written statements that must be included in the election form. In addition, we described the circumstances under which the election would be revoked. Finally, we

discussed the limitations that apply to subsequent elections.

5. Conditions of Participation

Under section 1861(ss)(1)(J) of the Act, we may accept an RNHCI as a participating Medicare provider only if, in addition to meeting the specific requirements of that section, it meets other requirements we find necessary in the interest of patient health and safety. With the broad authority the Act gave us to impose these requirements, we set forth those conditions we found to be appropriate and necessary in the religious nonmedical setting that an RNHCI must meet to participate in the Medicare program. We set forth conditions of participation regarding patient rights (§ 403.730); quality assessment and performance improvement (§ 403.732); food services (§ 403.734); discharge planning (§ 403.736); administration (§ 403.738); staffing (§ 403.740); physical environment (§ 403.742); life safety from fire (§ 403.744); and utilization review (UR) (§ 403.746).

Life Safety from Fire. In the interim final rule we required that an RNHCI comply with the 1997 edition of the National Fire Protection Association (NFPA) Life Safety Code that we incorporated by reference. We discuss the update to the Life Safety Code later in this rule.

Utilization Review. This was the only condition of participation specifically required by statute. Section 1861(ss)(1)(H) of the Act requires that an RNHCI have in effect a UR plan that includes the establishment of a UR committee to carry out the functions of the program.

6. Estimate of Expenditures and Adjustments (§ 403.750)

Section 1821(c)(1) of the Act requires us to estimate the level of Medicare expenditures for RNHCI benefits before the beginning of each Federal fiscal year (FFY) and requires us to monitor the expenditure level for RNHCI services provided in each FFY. The estimation of expenditure levels is necessary to determine if adjustments are required to limit payments to RNHCI in the following FFY. In addition, the estimate is used to determine if the sunset provision is implemented.

As required by section 1861(e) of the Act, we will issue an annual Report to Congress, reviewed by the Office of Management and Budget, as the vehicle for reporting the potential need to make adjustments in payments and proposed mechanisms to be employed in order to stay within the established expenditure "trigger level" which is defined in

section 1821(c)(2)(C) of the Act as the "unadjusted trigger level" for an FFY, adjusted using the consumer price index to the last 12 months ending July of the prior FFY, and increased or decreased by the carry forward from the previous FFY. In the interim final rule, we provided descriptions and examples of the trigger level calculation, the carry forward calculation, estimated expenditures, and adjustments in payments to help explain the statutory provision (64 FR 67036).

Section 1821(c)(2)(A) of the Act provides for a proportional reduction in payments for covered RNHCI services when the level of estimated expenditures exceeds the trigger level for any FFY. In addition to a proportional reduction in payments, section 1821(c)(2)(B) of the Act authorizes us to impose other conditions or limitations to keep Medicare expenditure levels below the trigger level. The statute provides us with authority to decide which type of adjustment to apply but is silent about when to apply a proportional adjustment or when to apply alternative adjustments. Therefore, we have extremely broad authority to decide what type of adjustments to impose.

The regulations at § 403.750 implement the statute and provide for imposing either a proportional adjustment to payments or alternative adjustments, depending on the magnitude of the adjustment required to keep the level of estimated expenditures from exceeding the trigger level. To account for any error in the estimation of expenditure levels, the trigger level for the next FFY is adjusted by the "carry forward." If expenditures were to exceed the trigger level, the trigger level for the subsequent year must be decreased, resulting in more drastic payment adjustments in future years. We will do this in an attempt to prevent expenditures from exceeding the trigger level for 3 consecutive years and thus avoid having to implement the sunset provision.

7. Payment Provisions (§ 403.752)

Payment to RNHCI. Sections 1861(e) and (y)(1) of the Act grant us broad authority to construct a payment methodology for RNHCI. We specified that we would continue to pay RNHCI under the same reasonable cost methodology we used for Christian Science sanatoria. We pay RNHCI the reasonable cost of furnishing covered services to Medicare beneficiaries subject to the rate of increase limits in accordance with the provisions in 42 CFR 413.40, which implement section 101 of the Tax Equity and Fiscal