

Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248).

We added that we intended to continue paying all RNHCIs under a reasonable cost, subject to the rate of increase limit methodology, until we identify an appropriate prospective payment methodology to meet the special requirements for this provider group. In the interim final rule, we removed and reserved § 412.90(c) and § 412.98 for the RNHCI prospective payment.

**Administrative and Judicial Review.** Under section 1821(c)(2)(D) of the Act, there is no administrative or judicial review of our estimates of the level of expenditures for RNHCI services or the application of the adjustment in payments for those services. We incorporated this provision into our regulations.

**Beneficiary Liability.** Under the new regulations, RNHCIs are subject to Medicare rules for deductibles and coinsurance. Under normal Medicare rules, a provider of services may only bill a beneficiary deductible and coinsurance amounts. However, section 1821(c)(2)(E) of the Act authorizes RNHCIs to bill individuals an amount equal to the reduction in payments applied under sections 1821(c)(2)(A) or (B) of the Act. We implemented this provision specifying that when payments are reduced to prevent estimated expenditures from exceeding the trigger level, the RNHCI may bill the beneficiary the amount of the Medicare reduction attributable to his or her covered services. In addition, we set forth the requirements an RNHCI must follow regarding notifying a beneficiary of any current or proposed Medicare adjustments.

#### 8. Monitoring Expenditure Level (§ 403.754)

Under this section, we implemented section 1821(c)(3)(A) of the Act that requires us to monitor the expenditure level of RNHCIs beginning with FFY 1999 which allows us to calculate the carry forward.

#### 9. Sunset Provision (§ 403.756)

Section 1821(d) of the Act contains the RNHCI sunset provision. This provision, when activated, will prevent beneficiaries from making elections to receive Medicare payment for religious nonmedical health care services after a certain date. The sunset provision will be activated when the level of estimated expenditures exceeds the trigger level for three consecutive FFYs.

In accordance with this statutory provision, we specified in our regulations under this section that

beginning FFY 2002, if the level of estimated expenditures for all RNHCIs exceeds the trigger level for 3 consecutive FFYs, we would not accept any Medicare claims for payment for any election executed on or after January 1 of the following calendar year. We also specified in the interim final rule that we would publish a notice in the **Federal Register** at least 60 days before the effective date of the sunset provision to alert the public that no elections will be accepted for services in an RNHCI.

#### B. Medicaid Provisions (§ 440.170)

Services in RNHCIs are optional Medicaid services that a State may elect to include in its title XIX State plan in accordance with section 1905(a)(27) of the Act. This section permits the inclusion of any other medical care and any other type of remedial care recognized under State law, specified by CMS. Federal financial participation is only available to a State for these services if they are included in the State Plan.

Section 4454(b) of the BBA '97 provides for coverage of a religious nonmedical health care institution as defined in section 1861(ss)(1) of the Act. Specific ownership and affiliation requirements related to RNHCIs are described in section 1861(ss)(4) of the Act. We therefore revised § 440.170(c), "Services in Christian Science sanatoriums," to accommodate the new RNHCI program. Additionally, an RNHCI as defined in section 1861(ss)(1) of the Act furnishes exclusively inpatient services. Consequently, we revised § 440.170(b), "Services of Christian Science nurses," since it dealt with Christian Science and care in the home setting. We revised language at § 440.170(b), to define an RNHCI for Medicaid coverage purposes as one that meets the requirements of section 1861(ss)(1) of the Act, and § 440.170(c), to describe the specific ownership and affiliation requirements applicable to Medicaid RNHCIs. In addition, we specified in the interim final rule that RNHCIs are required to meet the Medicare conditions of participation described in part 403 of this rule in order to be eligible to receive payment under Medicaid, rather than developing separate Medicaid requirements.

#### C. Part 488 Survey, Certification, and Enforcement Procedures

Section 1861(ss)(2) of the Act provides that we may accept the accreditation of an approved group that RNHCIs meet or exceed some or all of the applicable Medicare requirements. Therefore, in the interim final rule, we

amended the regulations at § 488.2 to add section 1861(ss)(2) of the Act as the statutory basis for accreditation of RNHCIs and § 488.6 to add the RNHCIs to the list of providers in this section.

#### D. Part 489, Subpart I—Advance Directives

Section 4641 of the BBA '97 required that (for all providers entering into a provider agreement with CMS) an individual's advance directive be placed in a "prominent part" of his or her medical record. As this was such a minor change to our requirements at section 489, we requested that this change be appended to the RNHCI regulation, thereby avoiding a separate rulemaking process. Therefore, in the November 30, 1999 final rule, we added "prominent part" to § 489.102(a)(2) to reflect this requirement. That is, providers are required to document an advance directive in a prominent part of the individual's current medical record.

### III. Analysis of and Responses to Comments

We received a total of three items of correspondence on the interim final rule with comment published on November 30, 1999. The comment response on the interim final rule was very limited, and there were no similarities in issues raised by the commenters. We received comments from a fire safety association; a pediatric medical association; and a national religious organization that is oriented to healing by prayer. Each commenter approached the final rule in a manner that reflected the views of his or her particular organization. The major issues that commenters raised included the following:

- A prohibition on the admission of children to an RNHCI.
- Incorporation of a specific version of the fire safety code in the rule.
- Modification of the requirements to correspond to the beliefs of a specific religious group.
- Modification of the requirements related to the election process and the related coverage of services.
- Modification of the prohibition on the use of restraints.

We are not making any changes in the regulation as a result of the three comments we received, although we note that one change, regarding the Life Safety Code, was made in a separate rule on January 10, 2003, with an effective date of March 11, 2003 (68 FR 1374). We summarized the issues raised by each commenter and have provided our responses below.