

regulations which require, for purposes of title XVIII of the Social Security Act [this subchapter], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h) [section 1395f(h) of this title]), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984.”

DETERMINATION OF NOMINAL CHARGES FOR APPLYING
NOMINALITY TEST

Section 2308(b)(1) of Pub. L. 98-369 provided that: “For purposes of applying the nominality test under sections 1814(b)(2) [subsec. (b)(2) of this section] and 1833(a)(2)(B)(ii) [section 1395f(a)(2)(B)(ii) of this title] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [sections 1395c et seq., 1395j et seq. of this title]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.”

STUDY AND REPORT RELATING TO THE REIMBURSEMENT
METHOD AND BENEFIT STRUCTURE FOR HOSPICE CARE;
SUPERVISION OF REPORT BY COMPTROLLER GENERAL

Section 122(j), formerly §122(i), of Pub. L. 97-248, redesignated §122(i), by Pub. L. 97-448, title III, §309(a)(6), Jan. 12, 1983, 96 Stat. 2408, provided that:

“(1) The Secretary of Health and Human Services shall conduct a study and, prior to January 1, 1986, report to the Congress on whether or not the reimbursement method and benefit structure (including copayments) for hospice care under title XVIII of the Social Security Act [this subchapter] are fair and equitable and promote the most efficient provision of hospice care. Such report shall include the feasibility and advisability of providing for prospective reimbursement for hospice care, an evaluation of the inclusion of payment for outpatient drugs, an evaluation of the need to alter the method of reimbursement for nutritional, dietary, and bereavement counseling as hospice care, and any recommendations for legislative changes in the hospice care reimbursement or benefit structure.

“(2) The Comptroller General shall monitor and evaluate the study and the preparation of the report under paragraph (1).”

WAIVER OF LIMITATIONS TO ALLOW PRE-EXISTING
HOSPICES TO PARTICIPATE AS A HOSPICE PROGRAM

Section 122(k), formerly §122(j), of Pub. L. 97-248, as redesignated and amended by Pub. L. 97-448, title III, §309(a)(6), (7), Jan. 12, 1983, 96 Stat. 2408, provided that: “The Secretary of Health and Human Services shall grant waivers of the limitations imposed by section 1814(i)(2) of the Social Security Act [subsec. (i)(2) of this section] (relating to the cap amount), section 1861(dd)(1)(G) of such Act [section 1395x(dd)(1)(G) of this title] (relating to the limitations on the frequency and number of respite care days), and section 1861(dd)(2)(A)(iii) of such Act [section 1395x(dd)(2)(A)(iii) of this title] (relating to the aggregate limit on the number of days of inpatient care), as may be necessary to allow any institution which commenced operations as a hospice prior to January 1, 1975, to participate until October 1, 1986, in a viable manner

as a hospice program under title XVIII of the Social Security Act [this subchapter].”

MEDICARE PAYMENT BASIS FOR SERVICES PROVIDED BY
AGENCIES AND PROVIDERS; EFFECTIVE DATE

Section 16 of Pub. L. 93-233 provided that: “In the administration of titles V, XVIII, and XIX of the Social Security Act [subchapters V, XVIII, and XIX of this chapter], the amount payable under such title to any provider of services on account of services provided by such hospital, skilled nursing facility, or home health agency shall be determined (for any period with respect to which the amendments made by section 233 of Public Law 92-603 [this section and sections 706, 709, 1395f, and 1396b of this title] would, except for the provisions of this section, be applicable) in like manner as if the date contained in the first and second sentences of subsection (f) of such section 233 [set out as an Effective Date of 1972 Amendment note above] were December 31, 1973, rather than December 31, 1972.”

§ 1395g. Payments to providers of services

(a) Determination of amount

The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the Government Accountability Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

(b) Conditions

No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1395x(w)(2) of this title, to have in effect an arrangement with a quality control and peer review organization for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount due (as determined pursuant to such section) to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this subchapter for utilization review activities provided by a quality control and peer review organization pursuant to an arrangement or deemed arrangement with a hospital under section 1395x(w)(2) of this title shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.

(c) Payments under assignment or power of attorney

No payment which may be made to a provider of services under this subchapter for any service

furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(d) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part to a provider of services was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(e) Periodic interim payments

(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title, and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1395ww(d)(9)(A) of this title) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1395h of this title, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

(B) In the case of a hospital that—

(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

(ii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and

continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(C) In the case of a hospital that—

- (i) is located in a rural area,
- (ii) has 100 or fewer beds, and
- (iii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986, in the cases described in subparagraphs (A) through (D)) with respect to—

(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title);

(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1395f(b)(3) or 1395ww(c) of this title, if payment on a periodic interim payment basis is an integral part of such reimbursement system;

(C) extended care services;

(D) hospice care; and

(E) inpatient critical access hospital services;

if the provider of such services elects to receive, and qualifies for, such payments.

(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1395ww of this title) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.

(4) A hospital created by the merger or consolidation of 2 or more hospitals or hospital campuses shall be eligible to receive periodic interim payment on the basis described in paragraph (1)(B) if—

(A) at least one of the hospitals or campuses received periodic interim payment on such basis prior to the merger or consolidation; and

(B) the merging or consolidating hospitals or campuses would each meet the requirement of paragraph (1)(B)(i) if such hospitals or campuses were treated as independent hospitals for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1815, as added Pub. L. 89-97, title I, § 102(a), July 30, 1965, 79 Stat. 297; amended Pub. L. 94-182, title I, § 112(a)(2), Dec. 31, 1975, 89 Stat. 1055; Pub. L. 95-142, § 2(a)(2), Oct. 25, 1977, 91 Stat. 1175; Pub. L. 96-473, § 6(i), Oct. 19, 1980, 94 Stat. 2266; Pub. L. 97-248, title I, §§ 117(a)(1), 148(b), Sept. 3, 1982, 96 Stat. 354, 394; Pub. L. 99-509, title IX, § 9311(a)(1), Oct. 21, 1986, 100 Stat. 1996; Pub. L. 101-239, title VI, § 6021(a), Dec. 19, 1989, 103 Stat. 2166; Pub. L. 105-33, title IV, § 4603(b), Aug. 5, 1997, 111 Stat. 470; Pub. L. 108-173, title IV, § 405(c)(1), title VII, § 736(a)(3), Dec. 8, 2003, 117 Stat. 2266, 2354; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

2003—Subsec. (e)(1)(B). Pub. L. 108-173, § 736(a)(3), substituted “of a hospital” for “of hospital” in introductory provisions.

Subsec. (e)(2). Pub. L. 108-173, § 405(c)(1)(A), inserted “, in the cases described in subparagraphs (A) through (D)” after “1986” in introductory provisions.

Subsec. (e)(2)(E). Pub. L. 108-173, § 405(c)(1)(B)–(D), added subpar. (E).

1997—Subsec. (e)(2)(C) to (E). Pub. L. 105-33 inserted “and” at end of subpar. (C), redesignated subpar. (E) as (D), and struck out former subpar. (D) which read as follows: “home health services; and”.

1989—Subsec. (e)(4). Pub. L. 101-239 added par. (4).

1986—Subsec. (e). Pub. L. 99-509 added subsec. (e).

1982—Subsec. (b). Pub. L. 97-248, § 148(b), substituted “quality control and peer review organization” for “Professional Standards Review Organization” whenever appearing.

Subsec. (d). Pub. L. 97-248, § 117(a)(1), added subsec. (d).

1980—Subsec. (c). Pub. L. 96-473 substituted “for or in connection with” for “for on in connection with”.

1977—Subsec. (c). Pub. L. 95-142 added subsec. (c).

1975—Pub. L. 94-182 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-173, title IV, § 405(c)(3), Dec. 8, 2003, 117 Stat. 2267, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to payments made on or after July 1, 2004.”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to cost reporting periods beginning on or after Oct. 1, 1999, except as otherwise provided, see section 4603(d) of Pub. L. 105-33, set out as an Effective Date note under section 1395fff of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6021(b) of Pub. L. 101-239 provided that: “The amendment made by subsection (a) [amending this section] shall apply to payments made for discharges occurring on or after the expiration of the 30-day period that begins on the date of the enactment of this Act [Dec. 19, 1989], regardless of the date of the merger or consolidation involved.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(a)(2) of Pub. L. 99-509 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after July 1, 1987.”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 117(b) of Pub. L. 97-248 provided that: “The amendments made by subsection (a) [amending this section and section 1395l of this title] apply to final determinations made on or after the date of the enactment of this Act [Sept. 3, 1982].”

Amendment by section 148(b) of Pub. L. 97-248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97-248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(a)(4) of Pub. L. 95-142 provided that: “The amendments made by this subsection [amending this section and sections 1395u and 1396a of this title] shall apply with respect to care and services furnished on or after the date of the enactment of this Act [Oct. 25, 1977].”

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-182 effective with respect to utilization review activities conducted on and after

the first day of the first month which begins more than 30 days after Dec. 31, 1975, see section 112(d) of Pub. L. 94-182, set out as a note under section 1395x of this title.

DEVELOPMENT OF ALTERNATIVE TIMING METHODS OF PERIODIC INTERIM PAYMENTS

Pub. L. 108-173, title IV, § 405(c)(2), Dec. 8, 2003, 117 Stat. 2267, provided that: “With respect to periodic interim payments to critical access hospitals for inpatient critical access hospital services under section 1815(e)(2)(E) of the Social Security Act [subsec. (e)(2)(E) of this section], as added by paragraph (1), the Secretary [of Health and Human Services] shall develop alternative methods for the timing of such payments.”

TRANSITION

Section 9311(a)(3) of Pub. L. 99-509 provided that: “Upon the request of a hospital which—

“(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act [this part] for inpatient hospital services on a periodic interim payment basis,

“(B) requests continuation of payment on such basis, and

“(C) is paid through an agency or organization with an agreement under section 1816 of such Act [section 1395h of this title],

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).”

DELAY IN PERIODIC INTERIM PAYMENTS

Section 120 of Pub. L. 97-248 provided that: “Notwithstanding section 1815(a) of the Social Security Act [subsec. (a) of this section], in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that—

“(1) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1983, such payments shall be deferred until fiscal year 1984; and

“(2) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1984, such payments shall be deferred until fiscal year 1985.”

Pub. L. 96-499, title IX, § 959, Dec. 5, 1980, 94 Stat. 2650, provided for deferral of interim payments to be made during last twenty-one days of fiscal year 1981 until fiscal year 1982, prior to repeal by Pub. L. 97-35, title XXI, § 2155, Aug. 13, 1981, 95 Stat. 802.

§ 1395h. Provisions relating to the administration of part A**(a) In general**

The administration of this part shall be conducted through contracts with medicare administrative contractors under section 1395kk-1 of this title.

(b) Repealed. Pub. L. 108-173, title IX, § 911(b)(3), Dec. 8, 2003, 117 Stat. 2383**(c) Prompt payment of claims**

(1) Repealed. Pub. L. 108-173, title IX, § 911(b)(4)(A), Dec. 8, 2003, 117 Stat. 2383.

(2)(A) Each contract under section 1395kk-1 of this title that provides for making payments under this part shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—