

§ 1396r-4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals

(a) Implementation of requirement

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) of this section which meets the requirements of subsection (d) of this section), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c) of this section.

(2)(A) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, the State plan amendment described in paragraph (1), consistent with subsection (c) of this section, effective for inpatient hospital services provided on or after July 1, 1989.

(B) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1990, the State must submit to the Secretary by not later than April 1, 1990, the State plan amendment described in paragraph (1), consistent with subsections (c) and (f) of this section, effective for inpatient hospital services provided on or after July 1, 1990.

(C) If a State plan under this subchapter provides for payments for inpatient hospital services on a prospective basis (whether per diem, per case, or otherwise), in order for the plan to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, a State plan amendment that provides, in the case of hospitals defined by the State as disproportionate share hospitals under paragraph (1)(A), for an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs or exceptionally long lengths of stay for individuals under one year of age.

(D) A State plan under this subchapter shall not be considered to meet the requirements of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs), as of October 1, 1998, unless the State has submitted to the Secretary by such date a description of the methodology used by the State to identify and to make payments to disproportionate share hospitals, including children's hospitals, on the basis of the propor-

tion of low-income and medicaid patients (including such patients who receive benefits through a managed care entity) served by such hospitals. The State shall provide an annual report to the Secretary describing the disproportionate share payments to each such disproportionate share hospital.

(3) The Secretary shall, not later than 90 days after the date a State submits an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(4) The requirement of this subsection may not be waived under section 1396n(b)(4) of this title.

(b) Hospitals deemed disproportionate share

(1) For purposes of subsection (a)(1) of this section, a hospital which meets the requirements of subsection (d) of this section is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term "medicaid inpatient utilization rate" means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under a State plan approved under this subchapter in a period (regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. In this paragraph, the term "inpatient day" includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(3) For purposes of paragraph (1)(B), the term "low-income utilization rate" means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under this subchapter (regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity) and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, less the portion of any cash subsidies described in clause (i)(II) of subparagraph (A) in the period reasonably attributable to inpatient hospital services, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under this subchapter).

(4) The Secretary may not restrict a State's authority to designate hospitals as disproportionate share hospitals under this section. The previous sentence shall not be construed to affect the authority of the Secretary to reduce payments pursuant to section 1396b(w)(1)(A)(iii) of this title if the Secretary determines that, as a result of such designations, there is in effect a hold harmless provision described in section 1396b(w)(4) of this title.

(c) Payment adjustment

Subject to subsections (f) and (g) of this section, in order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to at least the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1395ww(a)(4) of this title), and (B) the hospital's disproportionate share adjustment percentage (established under section 1395ww(d)(5)(F)(iv) of this title);

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and (without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section) for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2) of this section) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State or the hospital's low-income utilization rate (as defined in paragraph¹ (b)(3) of this section); or

(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—

(A) applies equally to all hospitals of each type; and

(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this subchapter or to low-income patients,

except that, for purposes of paragraphs (1)(B) and (2)(A) of subsection (a) of this section, the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to at least one-third of the increase otherwise applicable under this subsection (in the case of such paragraph (1)(B)) and at least two-thirds of such increase (in the case of such paragraph (2)(A)). In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.

(d) Requirements to qualify as disproportionate share hospital

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

(i) the inpatients of which are predominantly individuals under 18 years of age; or

(ii) which does not offer nonemergency obstetric services to the general population as of December 22, 1987.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1395ww of this title), in paragraph (1) the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) of not less than 1 percent.

(e) Special rule

(1) A State plan shall be considered to meet the requirement of section 1396a(a)(13)(A)(iv) of this title (insofar as it requires payments to

¹ So in original. Probably should be "subsection".

hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) of this section if (A)(i) the plan provided for payment adjustments based on a pooling arrangement involving a majority of the hospitals participating under the plan for disproportionate share hospitals as of January 1, 1984, or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, (B) the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection, and (C) the plan meets the requirement of subsection (d)(3) of this section and such payment adjustments are made consistent with the last sentence of subsection (c) of this section.

(2) In the case of a State that used a health insuring organization before January 1, 1986, to administer a portion of its plan on a statewide basis, beginning on July 1, 1988—

(A) the requirements of subsections (b) and (c) of this section (other than the last sentence of subsection (c) of this section) shall not apply if the aggregate amount of the payment adjustments under the plan for disproportionate share hospitals (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(f) Limitation on Federal financial participation

(1) In general

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustment made under this section for hospitals in a State for quarters in a fiscal year in excess of the disproportionate share hospital (in this subsection referred to as "DSH") allotment for the State for the fiscal year, as specified in paragraphs (2), (3), and (7).

(2) State DSH allotments for fiscal years 1998 through 2002

Subject to paragraph (4), the DSH allotment for a State for each fiscal year during the period beginning with fiscal year 1998 and ending with fiscal year 2002 is determined in accordance with the following table:

State or District	DSH Allotment (in millions of dollars)				
	FY 98	FY 99	FY 00	FY 01	FY 02
Alabama	293	269	248	246	246
Alaska	10	10	10	9	9
Arizona	81	81	81	81	81

State or District	DSH Allotment (in millions of dollars)				
	FY 98	FY 99	FY 00	FY 01	FY 02
Arkansas	2	2	2	2	2
California	1,085	1,068	986	931	877
Colorado	93	85	79	74	74
Connecticut	200	194	164	160	160
Delaware	4	4	4	4	4
District of Columbia	23	23	49	49	49
Florida	207	203	197	188	160
Georgia	253	248	241	228	215
Hawaii	0	0	0	0	0
Idaho	1	1	1	1	1
Illinois	203	199	193	182	172
Indiana	201	197	191	181	171
Iowa	8	8	8	8	8
Kansas	51	49	42	36	33
Kentucky	137	134	130	123	116
Louisiana	880	795	713	658	631
Maine	103	99	84	84	84
Maryland	72	70	68	64	61
Massachusetts	288	282	273	259	244
Michigan	249	244	237	224	212
Minnesota	16	16	33	33	33
Mississippi	143	141	136	129	122
Missouri	436	423	379	379	379
Montana	0.2	0.2	0.2	0.2	0.2
Nebraska	5	5	5	5	5
Nevada	37	37	37	37	37
New Hampshire	140	136	130	130	130
New Jersey	600	582	515	515	515
New Mexico	5	5	9	9	9
New York	1,512	1,482	1,436	1,361	1,285
North Carolina	278	272	264	250	236
North Dakota	1	1	1	1	1
Ohio	382	374	363	344	325
Oklahoma	16	16	16	16	16
Oregon	20	20	20	20	20
Pennsylvania	529	518	502	476	449
Rhode Island	62	60	58	55	52
South Carolina	313	303	262	262	262
South Dakota	1	1	1	1	1
Tennessee	0	0	0	0	0
Texas	979	950	806	765	765
Utah	3	3	3	3	3
Vermont	18	18	18	18	18
Virginia	70	68	66	63	59
Washington	174	171	166	157	148
West Virginia	64	63	61	58	54
Wisconsin	7	7	7	7	7
Wyoming	0	0	0.1	0.1	0.1

(3) State DSH allotments for fiscal year 2003 and thereafter

(A) In general

Except as provided in paragraphs (6) and (7) and subparagraph (E), the DSH allotment for any State for fiscal year 2003 and each succeeding fiscal year is equal to the DSH allotment for the State for the preceding fiscal year under paragraph (2) or this paragraph, increased, subject to subparagraphs (B) and (C) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(B) Limitation

The DSH allotment for a State shall not be increased under subparagraph (A) for a fiscal year to the extent that such an increase would result in the DSH allotment for the year exceeding the greater of—

- (i) the DSH allotment for the previous year, or

(ii) 12 percent of the total amount of expenditures under the State plan for medical assistance during the fiscal year.

(C) Special, temporary increase in allotments on a one-time, non-cumulative basis

The DSH allotment for any State (other than a State with a DSH allotment determined under paragraph (5))—

(i) for fiscal year 2004 is equal to 116 percent of the DSH allotment for the State for fiscal year 2003 under this paragraph, notwithstanding subparagraph (B); and

(ii) for each succeeding fiscal year is equal to the DSH allotment for the State for fiscal year 2004 or, in the case of fiscal years beginning with the fiscal year specified in subparagraph (D) for that State, the DSH allotment for the State for the previous fiscal year increased by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average), for the previous fiscal year.

(D) Fiscal year specified

For purposes of subparagraph (C)(ii), the fiscal year specified in this subparagraph for a State is the first fiscal year for which the Secretary estimates that the DSH allotment for that State will equal (or no longer exceed) the DSH allotment for that State under the law as in effect before December 8, 2003.

(E) Temporary increase in allotments during recession

(i) In general

Subject to clause (ii), the DSH allotment for any State—

(I) for fiscal year 2009 is equal to 102.5 percent of the DSH allotment that would be determined under this paragraph for the State for fiscal year 2009 without application of this subparagraph, notwithstanding subparagraphs (B) and (C);

(II) for fiscal year 2010 is equal to 102.5 percent of the DSH allotment for the State for fiscal year 2009, as determined under subclause (I); and

(III) for each succeeding fiscal year is equal to the DSH allotment for the State under this paragraph determined without applying subclauses (I) and (II).

(ii) Application

Clause (i) shall not apply to a State for a year in the case that the DSH allotment for such State for such year under this paragraph determined without applying clause (i) would grow higher than the DSH allotment specified under clause (i) for the State for such year.

(4) Special rule for fiscal years 2001 and 2002

(A) In general

Notwithstanding paragraph (2), the DSH allotment for any State for—

(i) fiscal year 2001, shall be the DSH allotment determined under paragraph (2) for fiscal year 2000 increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price

index for all urban consumers (all items; U.S. city average) for fiscal year 2000; and

(ii) fiscal year 2002, shall be the DSH allotment determined under clause (i) increased, subject to subparagraph (B) and paragraph (5), by the percentage change in the consumer price index for all urban consumers (all items; U.S. city average) for fiscal year 2001.

(B) Limitation

Subparagraph (B) of paragraph (3) shall apply to subparagraph (A) of this paragraph in the same manner as that subparagraph (B) applies to paragraph (3)(A).

(C) No application to allotments after fiscal year 2002

The DSH allotment for any State for fiscal year 2003 or any succeeding fiscal year shall be determined under paragraph (3) without regard to the DSH allotments determined under subparagraph (A) of this paragraph.

(5) Special rule for low DSH States

(A) For fiscal years 2001 through 2003 for extremely low DSH States

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 1999, as reported to the Administrator of the Health Care Financing Administration as of August 31, 2000, is greater than 0 but less than 1 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for fiscal year 2001 shall be increased to 1 percent of the State's total amount of expenditures under such plan for such assistance during such fiscal year. In subsequent fiscal years before fiscal year 2004, such increased allotment is subject to an increase for inflation as provided in paragraph (3)(A).

(B) For fiscal year 2004 and subsequent fiscal years

In the case of a State in which the total expenditures under the State plan (including Federal and State shares) for disproportionate share hospital adjustments under this section for fiscal year 2000, as reported to the Administrator of the Centers for Medicare & Medicaid Services as of August 31, 2003, is greater than 0 but less than 3 percent of the State's total amount of expenditures under the State plan for medical assistance during the fiscal year, the DSH allotment for the State with respect to—

(i) fiscal year 2004 shall be the DSH allotment for the State for fiscal year 2003 increased by 16 percent;

(ii) each succeeding fiscal year before fiscal year 2009 shall be the DSH allotment for the State for the previous fiscal year increased by 16 percent; and

(iii) fiscal year 2009 and any subsequent fiscal year, shall be the DSH allotment for the State for the previous year subject to an increase for inflation as provided in paragraph (3)(A).

(6) Allotment adjustments**(A) Tennessee****(i) In general**

Only with respect to fiscal year 2007, the DSH allotment for Tennessee for such fiscal year, notwithstanding the table set forth in paragraph (2) or the terms of the TennCare Demonstration Project in effect for the State, shall be the greater of—

(I) the amount that the Secretary determines is equal to the Federal medical assistance percentage component attributable to disproportionate share hospital payment adjustments for the demonstration year ending in 2006 that is reflected in the budget neutrality provision of the TennCare Demonstration Project; and

(II) \$280,000,000.

Only with respect to fiscal years 2008, 2009, 2010, and 2011, the DSH allotment for Tennessee for the fiscal year, notwithstanding such table or terms, shall be the amount specified in the previous sentence for fiscal year 2007. Only with respect to fiscal year 2012 for the period ending on December 31, 2011, the DSH allotment for Tennessee for such portion of the fiscal year, notwithstanding such table or terms, shall be $\frac{1}{4}$ of the amount specified in the first sentence for fiscal year 2007.

(ii) Limitation on amount of payment adjustments eligible for Federal financial participation

Payment under section 1396b(a) of this title shall not be made to Tennessee with respect to the aggregate amount of any payment adjustments made under this section for hospitals in the State for fiscal year 2007, 2008, 2009, 2010, 2011, or for period² in fiscal year 2012 described in clause (i) that is in excess of 30 percent of the DSH allotment for the State for such fiscal year or period determined pursuant to clause (i).

(iii) State plan amendment

The Secretary shall permit Tennessee to submit an amendment to its State plan under this subchapter that describes the methodology to be used by the State to identify and make payments to disproportionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities. The Secretary may not approve such plan amendment unless the methodology described in the amendment is consistent with the requirements under this section for making payment adjustments to disproportionate share hospitals. For purposes of demonstrating budget neutrality under the TennCare Demonstration Project, payment adjustments made pursuant to a State plan amendment approved in accordance with this subparagraph shall be considered expenditures under such project.

(iv) Offset of Federal share of payment adjustments for fiscal years 2007 through 2011 and the first calendar quarter of fiscal year 2012 against Essential Access Hospital supplemental pool payments under the TennCare Demonstration Project

(I) The total amount of Essential Access Hospital supplemental pool payments that may be made under the TennCare Demonstration Project for fiscal year 2007, 2008, 2009, 2010, 2011, or for a period in fiscal year 2012 described in clause (i) shall be reduced on a dollar for dollar basis by the amount of any payments made under section 1396b(a) of this title to Tennessee with respect to payment adjustments made under this section for hospitals in the State for such fiscal year or period.

(II) The sum of the total amount of payments made under section 1396b(a) of this title to Tennessee with respect to payment adjustments made under this section for hospitals in the State for fiscal year 2007, 2008, 2009, 2010, 2011, or for a period in fiscal year 2012 described in clause (i) and the total amount of Essential Access Hospital supplemental pool payments made under the TennCare Demonstration Project for such fiscal year or period shall not exceed the State's DSH allotment for such fiscal year or period established under clause (i).

(v) Allotment for 2d, 3rd, and 4th quarters of fiscal year 2012 and for fiscal year 2013

Notwithstanding the table set forth in paragraph (2):

(I) 2d, 3rd, and 4th quarters of fiscal year 2012

In the case of a State that has a DSH allotment of \$0 for the 2d, 3rd, and 4th quarters of fiscal year 2012, the DSH allotment shall be \$47,200,000 for such quarters.

(II) Fiscal year 2013

In the case of a State that has a DSH allotment of \$0 for fiscal year 2013, the DSH allotment shall be \$53,100,000 for such fiscal year.

(B) Hawaii**(i) In general**

Only with respect to each of fiscal years 2007 through 2011, the DSH allotment for Hawaii for such fiscal year, notwithstanding the table set forth in paragraph (2), shall be \$10,000,000. Only with respect to fiscal year 2012 for the period ending on December 31, 2011, the DSH allotment for Hawaii for such portion of the fiscal year, notwithstanding the table set forth in paragraph (2), shall be \$2,500,000.

(ii) State plan amendment

The Secretary shall permit Hawaii to submit an amendment to its State plan under this subchapter that describes the methodology to be used by the State to identify and make payments to propor-

²So in original. Probably should be preceded by "a".

tionate share hospitals, including children's hospitals and institutions for mental diseases or other mental health facilities. The Secretary may not approve such plan amendment unless the methodology described in the amendment is consistent with the requirements under this section for making payment adjustments to disproportionate share hospitals.

(iii) Allotment for 2d, 3rd, and 4th quarter of fiscal year 2012, fiscal year 2013, and succeeding fiscal years

Notwithstanding the table set forth in paragraph (2):

(I) 2d, 3rd, and 4th quarter of fiscal year 2012

The DSH allotment for Hawaii for the 2d, 3rd, and 4th quarters of fiscal year 2012 shall be \$7,500,000.

(II) Treatment as a low-DSH State for fiscal year 2013 and succeeding fiscal years

With respect to fiscal year 2013, and each fiscal year thereafter, the DSH allotment for Hawaii shall be increased in the same manner as allotments for low DSH States are increased for such fiscal year under clause (iii) of paragraph (5)(B).

(III) Certain hospital payments

The Secretary may not impose a limitation on the total amount of payments made to hospitals under the QUEST section 1115 Demonstration Project except to the extent that such limitation is necessary to ensure that a hospital does not receive payments in excess of the amounts described in subsection (g), or as necessary to ensure that such payments under the waiver and such payments pursuant to the allotment provided in this clause do not, in the aggregate in any year, exceed the amount that the Secretary determines is equal to the Federal medical assistance percentage component attributable to disproportionate share hospital payment adjustments for such year that is reflected in the budget neutrality provision of the QUEST Demonstration Project.

(7) Medicaid DSH reductions

(A) Reductions

(i) In general

For each of fiscal years 2014 through 2020 the Secretary shall effect the following reductions:

(I) Reduction in DSH allotments

The Secretary shall reduce DSH allotments to States in the amount specified under the DSH health reform methodology under subparagraph (B) for the State for the fiscal year.

(II) Reductions in payments

The Secretary shall reduce payments to States under section 1396b(a) of this title for each calendar quarter in the fis-

cal year, in the manner specified in clause (iii), in an amount equal to ¼ of the DSH allotment reduction under subclause (I) for the State for the fiscal year.

(ii) Aggregate reductions

The aggregate reductions in DSH allotments for all States under clause (i)(I) shall be equal to—

- (I) \$500,000,000 for fiscal year 2014;
 - (II) \$600,000,000 for fiscal year 2015;
 - (III) \$600,000,000 for fiscal year 2016;
 - (IV) \$1,800,000,000 for fiscal year 2017;
 - (V) \$5,000,000,000 for fiscal year 2018;
 - (VI) \$5,600,000,000 for fiscal year 2019;
- and
- (VII) \$4,000,000,000 for fiscal year 2020.

The Secretary shall distribute such aggregate reductions among States in accordance with subparagraph (B).

(iii) Manner of payment reduction

The amount of the payment reduction under clause (i)(II) for a State for a quarter shall be deemed an overpayment to the State under this subchapter to be disallowed against the State's regular quarterly draw for all spending under section 1396b(d)(2) of this title. Such a disallowance is not subject to a reconsideration under subsections (d) and (e) of section 1316 of this title.

(iv) Definition

In this paragraph, the term "State" means the 50 States and the District of Columbia.

(B) DSH Health Reform methodology

The Secretary shall carry out subparagraph (A) through use of a DSH Health Reform methodology that meets the following requirements:

(i) The methodology imposes the largest percentage reductions on the States that—

- (I) have the lowest percentages of uninsured individuals (determined on the basis of data from the Bureau of the Census, audited hospital cost reports, and other information likely to yield accurate data) during the most recent year for which such data are available; or
- (II) do not target their DSH payments on—

- (aa) hospitals with high volumes of Medicaid inpatients (as defined in subsection (b)(1)(A)); and
- (bb) hospitals that have high levels of uncompensated care (excluding bad debt).

(ii) The methodology imposes a smaller percentage reduction on low DSH States described in paragraph (5)(B).

(iii) The methodology takes into account the extent to which the DSH allotment for a State was included in the budget neutrality calculation for a coverage expansion approved under section 1315 of this title as of July 31, 2009.

(8) "State" defined

In this subsection, the term "State" means the 50 States and the District of Columbia.

(g) Limit on amount of payment to hospital**(1) Amount of adjustment subject to uncompensated costs****(A) In general**

A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) of this section with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this subchapter, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

(B) Limit to public hospitals during transition period

With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

(C) Modifications for private hospitals

With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

(2) Additional amount during transition period for certain hospitals with high disproportionate share**(A) In general**

In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) of this section if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act [42 U.S.C. 201 et seq.], subchapter V of this chapter, subchapter XVIII of this chapter, or from third party payors (not including the State plan under this subchapter) that are used for providing such services during the year.

(B) "Hospital with high disproportionate share" defined

In subparagraph (A), a hospital is a "hospital with high disproportionate share" if—

- (i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and
- (ii) the hospital—

(I) meets the requirement described in subsection (b)(1)(A) of this section, or

(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

(C) "Applicable minimum amount" defined

In subparagraph (A), the "applicable minimum amount" for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.

(h) Limitation on certain State DSH expenditures**(1) In general**

Payment under section 1396b(a) of this title shall not be made to a State with respect to any payment adjustments made under this section for quarters in a fiscal year (beginning with fiscal year 1998) to institutions for mental diseases or other mental health facilities, to the extent the aggregate of such adjustments in the fiscal year exceeds the lesser of the following:

(A) 1995 IMD DSH payment adjustments

The total State DSH expenditures that are attributable to fiscal year 1995 for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(B) Applicable percentage of 1995 total DSH payment allotment

The amount of such payment adjustments which are equal to the applicable percentage of the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

(2) Applicable percentage**(A) In general**

For purposes of paragraph (1), the applicable percentage with respect to—

- (i) each of fiscal years 1998, 1999, and 2000, is the percentage determined under subparagraph (B); or
- (ii) a succeeding fiscal year is the lesser of the percentage determined under subparagraph (B) or the following percentage:

- (I) For fiscal year 2001, 50 percent.
- (II) For fiscal year 2002, 40 percent.
- (III) For each succeeding fiscal year, 33 percent.

(B) 1995 percentage

The percentage determined under this subparagraph is the ratio (determined as a percentage) of—

- (i) the Federal share of payment adjustments made to hospitals in the State under subsection (c) of this section that are attributable to the 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary) for payments to institutions for mental diseases and other mental health facilities, to
- (ii) the State 1995 DSH spending amount.

(C) State 1995 DSH spending amount

For purposes of subparagraph (B)(ii), the “State 1995 DSH spending amount”, with respect to a State, is the Federal medical assistance percentage (for fiscal year 1995) of the payment adjustments made under subsection (c) of this section under the State plan that are attributable to the fiscal year 1995 DSH allotment for the State (as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary).

(i) Requirement for direct payment

(1) In general

No payment may be made under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, for services furnished by a hospital on or after October 1, 1997, with respect to individuals eligible for medical assistance under the State plan who are enrolled with a managed care entity (as defined in section 1396u-2(a)(1)(B) of this title) or under any other managed care arrangement unless a payment, equal to the amount of the payment adjustment—

(A) is made directly to the hospital by the State; and

(B) is not used to determine the amount of a prepaid capitation payment under the State plan to the entity or arrangement with respect to such individuals.

(2) Exception for current arrangements

Paragraph (1) shall not apply to a payment adjustment provided pursuant to a payment arrangement in effect on July 1, 1997.

(j) Annual reports and other requirements regarding payment adjustments

With respect to fiscal year 2004 and each fiscal year thereafter, the Secretary shall require a State, as a condition of receiving a payment under section 1396b(a)(1) of this title with respect to a payment adjustment made under this section, to do the following:

(1) Report

The State shall submit an annual report that includes the following:

- (A) An identification of each disproportionate share hospital that received a payment adjustment under this section for the

preceding fiscal year and the amount of the payment adjustment made to such hospital for the preceding fiscal year.

(B) Such other information as the Secretary determines necessary to ensure the appropriateness of the payment adjustments made under this section for the preceding fiscal year.

(2) Independent certified audit

The State shall annually submit to the Secretary an independent certified audit that verifies each of the following:

(A) The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the total amount of claimed expenditures made under this section.

(B) Payments under this section to hospitals that comply with the requirements of subsection (g) of this section.

(C) Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to individuals described in paragraph (1)(A) of such subsection are included in the calculation of the hospital-specific limits under such subsection.

(D) The State included all payments under this subchapter, including supplemental payments, in the calculation of such hospital-specific limits.

(E) The State has separately documented and retained a record of all of its costs under this subchapter, claimed expenditures under this subchapter, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1923, formerly Pub. L. 100-203, title IV, § 4112, Dec. 22, 1987, 101 Stat. 1330-148; renumbered § 1923 of act Aug. 14, 1935, and amended Pub. L. 100-360, title III, § 302(b)(2), title IV, § 411(k)(6)(A)-(B)(ix), July 1, 1988, 102 Stat. 752, 792-794; Pub. L. 100-485, title VI, § 608(d)(15)(C), (26)(A)-(F), Oct. 13, 1988, 102 Stat. 2417, 2421, 2422; Pub. L. 101-239, title VI, § 6411(c)(1), Dec. 19, 1989, 103 Stat. 2270; Pub. L. 101-508, title IV, §§ 4702(a), 4703(a)-(c), Nov. 5, 1990, 104 Stat. 1388-171; Pub. L. 102-234, §§ 3(b)(1), (2)(A), (c), Dec. 12, 1991, 105 Stat. 1799, 1802, 1803; Pub. L. 103-66, title XIII, § 13621(a)(1), (b)(1), (2), Aug. 10, 1993, 107 Stat. 629-631; Pub. L. 105-33, title IV, §§ 4711(c)(2), 4721(a)(1), (b)-(d), Aug. 5, 1997, 111 Stat. 508, 511, 513, 514; Pub. L. 106-113, div. B, § 1000(a)(6) [title VI, §§ 601(a), 608(s)], Nov. 29, 1999, 113 Stat. 1536, 1501A-394, 1501A-397; Pub. L. 106-554, § 1(a)(6) [title VII, § 701(a)(1), (2), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-569, 2763A-570; Pub. L. 108-173, title X, § 1001(a)-(d), Dec. 8, 2003, 117 Stat. 2428-2430; Pub. L. 109-171, title VI, § 6054(a), Feb. 8, 2006, 120 Stat. 96; Pub. L. 109-432, div. B, title IV, § 404, Dec. 20, 2006, 120 Stat. 2995; Pub. L. 110-173, title II, § 204, Dec. 29, 2007, 121 Stat. 2513; Pub. L. 110-275, title II, § 202, July 15, 2008, 122 Stat. 2591; Pub. L. 111-3, title VI, § 616, Feb. 4, 2009, 123 Stat. 103; Pub. L. 111-5, div. B, title V, § 5002, Feb. 17, 2009, 123 Stat. 502; Pub. L. 111-148, title II, § 2551(a), title X, § 10201(e), Mar. 23, 2010, 124 Stat. 312, 920; Pub. L. 111-152, title I, § 1203, Mar. 30, 2010, 124 Stat. 1053.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (g)(2)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Prior to redesignation by Pub. L. 100-360, section 4112 of Pub. L. 100-203, cited in the credits to this section, was classified as a note under section 1396a of this title.

PRIOR PROVISIONS

A prior section 1923 of act Aug. 14, 1935, was renumbered section 1939 and is classified to section 1396v of this title.

AMENDMENTS

2010—Subsec. (f)(1). Pub. L. 111-148, §2551(a)(1), substituted “, (3), and (7)” for “and (3)”.

Subsec. (f)(3)(A). Pub. L. 111-148, §2551(a)(2), substituted “paragraphs (6) and (7)” for “paragraph (6)”.

Subsec. (f)(6). Pub. L. 111-148, §10201(e)(1)(A)(i), substituted “Allotment adjustments” for “Allotment adjustments for fiscal years 2007 through 2011 and the first calendar quarter of fiscal year 2012” in heading.

Subsec. (f)(6)(A)(v). Pub. L. 111-152, §1203(b), added cl. (v).

Subsec. (f)(6)(B)(iii). Pub. L. 111-152, §1203(a)(1), struck out “or paragraph (7)” after “paragraph (2)” in introductory provisions.

Pub. L. 111-148, §10201(e)(1)(A)(ii), added cl. (iii).

Subsec. (f)(7). Pub. L. 111-152, §1203(a)(2), added par. (7) and struck out former par. (7) which related to reduction of State DSH allotments once reduction in uninsured threshold reached.

Pub. L. 111-148, §2551(a)(4), added par. (7). Former par. (7) redesignated (8).

Subsec. (f)(7)(A). Pub. L. 111-148, §10201(e)(1)(B)(i), substituted “subparagraphs (E) and (G)” for “subparagraph (E)” in introductory provisions.

Subsec. (f)(7)(B)(i). Pub. L. 111-148, §10201(e)(1)(B)(ii)(I), added subcls. (I) to (IV) and struck out former subcls. (I) and (II) which read as follows:

“(I) if the State is a low DSH State described in paragraph (5)(B), the applicable percentage is equal to 25 percent; and

“(II) if the State is any other State, the applicable percentage is 50 percent.”

Subsec. (f)(7)(B)(ii). Pub. L. 111-148, §10201(e)(1)(B)(ii)(II), added subcls. (I) to (IV) and struck out former subcls. (I) and (II) which read as follows:

“(I) if the State is a low DSH State described in paragraph (5)(B), the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 25 percent; and

“(II) if the State is any other State, the applicable percentage is equal to the product of the percentage reduction in uncovered individuals for the fiscal year from the preceding fiscal year and 50 percent.”

Subsec. (f)(7)(E). Pub. L. 111-148, §10201(e)(1)(B)(ii)(III), which directed amendment of par. (7)(B) by substituting “50 percent” for “35 percent” in subpar. (E), was executed by making the substitution in par. (7)(E) to reflect the probable intent of Congress.

Subsec. (f)(7)(G). Pub. L. 111-148, §10201(e)(1)(B)(ii)(IV), which directed amendment of par. (7)(B) by adding subpar. (G) at the end, was executed by adding subpar. (G) at end of par. (7) to reflect the probable intent of Congress.

Subsec. (f)(8). Pub. L. 111-148, §2551(a)(3), redesignated par. (7) as (8).

2009—Subsec. (f)(3)(A). Pub. L. 111-5, §5002(1), substituted “paragraph (6) and subparagraph (E)” for “paragraph (6)”.

Subsec. (f)(3)(E). Pub. L. 111-5, §5002(2), added subpar. (E).

Subsec. (f)(6). Pub. L. 111-3, §616(1), substituted “2011 and the first calendar quarter of fiscal year 2012” for “2009 and the first calendar quarter of fiscal year 2010” in heading.

Subsec. (f)(6)(A)(i). Pub. L. 111-3, §616(2)(A), in concluding provisions, substituted “fiscal years 2008, 2009, 2010, and 2011, the DSH allotment for Tennessee for” for “fiscal years 2008 and 2009, the DSH allotment for Tennessee for such portion of” and “2012 for the period ending on December 31, 2011” for “2010 for the period ending on December 31, 2009”.

Subsec. (f)(6)(A)(ii). Pub. L. 111-3, §616(2)(B), substituted “2010, 2011, or for period in fiscal year 2012” for “or for a period in fiscal year 2010”.

Subsec. (f)(6)(A)(iv). Pub. L. 111-3, §616(2)(C)(i), substituted “2011 and the first calendar quarter of fiscal year 2012” for “2009 and the first calendar quarter of fiscal year 2010” in heading.

Subsec. (f)(6)(A)(iv)(I), (II). Pub. L. 111-3, §616(2)(C)(ii), substituted “2010, 2011, or for a period in fiscal year 2012” for “or for a period in fiscal year 2010”.

Subsec. (f)(6)(B)(i). Pub. L. 111-3, §616(3)(A), substituted “2007 through 2011” for “2007 through 2009” and “2012 for the period ending on December 31, 2011” for “2010 for the period ending on December 31, 2009”.

2008—Subsec. (f)(6). Pub. L. 110-275, §202(1), substituted “fiscal years 2007 through 2009 and the first calendar quarter of fiscal year 2010” for “for fiscal year 2007 and portions of fiscal year 2008” in heading.

Subsec. (f)(6)(A)(i). Pub. L. 110-275, §202(2)(A), in concluding provisions, substituted “fiscal years 2008 and 2009” for “fiscal year 2008 for the period ending on June 30, 2008”, struck out “% of” before “the amount specified in the previous sentence”, and inserted “Only with respect to fiscal year 2010 for the period ending on December 31, 2009, the DSH allotment for Tennessee for such portion of the fiscal year, notwithstanding such table or terms, shall be ¼ of the amount specified in the first sentence for fiscal year 2007.” at end.

Subsec. (f)(6)(A)(ii). Pub. L. 110-275, §202(2)(B), substituted “, 2008, 2009, or for a period in fiscal year 2010” for “or for a period in fiscal year 2008”.

Subsec. (f)(6)(A)(iv). Pub. L. 110-275, §202(2)(C), substituted “fiscal years 2007 through 2009 and the first calendar quarter of fiscal year 2010” for “fiscal year 2007 and fiscal year 2008” in heading and “, 2008, 2009, or for a period in fiscal year 2010” for “or for a period in fiscal year 2008” in subcls. (I) and (II).

Subsec. (f)(6)(B)(i). Pub. L. 110-275, §202(3), substituted “each of fiscal years 2007 through 2009” for “fiscal year 2007” in first sentence, inserted last sentence, and struck out former last sentence which read as follows: “Only with respect to fiscal year 2008 for the period ending on June 30, 2008, the DSH allotment for Hawaii for such portion of the fiscal year, notwithstanding the table set forth in paragraph (2), shall be \$7,500,000.”

2007—Subsec. (f)(6). Pub. L. 110-173, §204(1), inserted “and portions of fiscal year 2008” after “fiscal year 2007” in heading.

Subsec. (f)(6)(A)(i). Pub. L. 110-173, §204(2)(A), inserted concluding provisions.

Subsec. (f)(6)(A)(ii). Pub. L. 110-173, §204(2)(B), inserted “or for a period in fiscal year 2008 described in clause (i)” after “fiscal year 2007” and “or period” after “such fiscal year”.

Subsec. (f)(6)(A)(iv). Pub. L. 110-173, §204(2)(C), inserted “and fiscal year 2008” after “fiscal year 2007” in heading, “or for a period in fiscal year 2008 described in clause (i)” after “fiscal year 2007” in subcls. (I) and (II), “or period” after “for such fiscal year” in subcl. (I), and “or period” after “such fiscal year” in two places in subcl. (II).

Subsec. (f)(6)(B)(i). Pub. L. 110-173, §204(3), inserted at end “Only with respect to fiscal year 2008 for the period ending on June 30, 2008, the DSH allotment for Hawaii for such portion of the fiscal year, notwithstanding the table set forth in paragraph (2), shall be \$7,500,000.”

2006—Subsec. (f)(2). Pub. L. 109-171 under each of the columns for FY 00, FY 01, and FY 02, substituted “49” for “32” in the entry for the District of Columbia.

Subsec. (f)(6). Pub. L. 109-432 amended heading and text of par. (6) generally, substituting provisions relating to allotment adjustments for fiscal year 2007 in Tennessee and Hawaii for provisions relating to allotment adjustments with respect to fiscal year 2004 or 2005 in any State if a statewide waiver had been revoked or terminated before the end of either such fiscal year and there had been no DSH allotment for the State.

2003—Subsec. (f)(3)(A). Pub. L. 108-173, §1001(a)(1), (c)(1), substituted “Except as provided in paragraph (6), the DSH” for “The DSH” and “subparagraphs (B) and (C)” for “subparagraph (B)”.

Subsec. (f)(3)(C), (D). Pub. L. 108-173, §1001(a)(2), added subpars. (C) and (D).

Subsec. (f)(5). Pub. L. 108-173, §1001(b)(1), (2), (4), struck out “extremely” before “low DSH States” in heading, designated existing provisions as subpar. (A) and inserted subpar. heading, and added subpar. (B).

Subsec. (f)(5)(A). Pub. L. 108-173, §1001(b)(3), which directed insertion of “before fiscal year 2004” after “In subsequent years”, was executed by making the insertion after “In subsequent fiscal years” to reflect the probable intent of Congress.

Subsec. (f)(6), (7). Pub. L. 108-173, §1001(c)(2), (3), added par. (6) and redesignated former par. (6) as (7).

Subsec. (j). Pub. L. 108-173, §1001(d), added subsec. (j).

2000—Subsec. (a)(2)(D). Pub. L. 106-554, §1(a)(6) [title VII, §701(b)(2)(A)], inserted “(including such patients who receive benefits through a managed care entity)” after “the proportion of low-income and medicaid patients”.

Subsec. (b)(2). Pub. L. 106-554, §1(a)(6) [title VII, §701(b)(2)(B)], inserted “(regardless of whether such patients receive medical assistance on a fee-for-service basis or through a managed care entity)” after “a State plan approved under this subchapter in a period”.

Subsec. (b)(3)(A)(i)(I). Pub. L. 106-554, §1(a)(6) [title VII, §701(b)(2)(C)], inserted “(regardless of whether the services were furnished on a fee-for-service basis or through a managed care entity)” after “under a State plan under this subchapter”.

Subsec. (f)(2). Pub. L. 106-554, §1(a)(6) [title VII, §701(a)(1)(A)(i)], substituted “Subject to paragraph (4), the DSH allotment” for “The DSH allotment” in introductory provisions.

Subsec. (f)(3)(A). Pub. L. 106-554, §1(a)(6) [title VII, §701(a)(2)(B)], inserted “and paragraph (5)” after “subparagraph (B)”.

Subsec. (f)(4). Pub. L. 106-554, §1(a)(6) [title VII, §701(a)(1)(A)(iii)], added par. (4). Former par. (4) redesignated (6).

Subsec. (f)(5). Pub. L. 106-554, §1(a)(6) [title VII, §701(a)(2)(A)], added par. (5).

Subsec. (f)(6). Pub. L. 106-554, §1(a)(6) [title VII, §701(a)(1)(A)(ii)], redesignated par. (4) as (6).

1999—Subsec. (c)(3)(B). Pub. L. 106-113, §1000(a)(6) [title VI, §608(s)], substituted comma for period at end.

Subsec. (f)(2). Pub. L. 106-113, §1000(a)(6) [title VI, §601(a)], under each of the columns for FY 00, FY 01, and FY 02, substituted “32” for “23” in the entry for the District of Columbia, “33” for “16” in the entry for Minnesota, “9” for “5” in the entry for New Mexico, and “0.1” for “0” in the entry for Wyoming.

1997—Subsec. (a)(1). Pub. L. 105-33, §4711(c)(2), substituted “1396a(a)(13)(A)(iv)” for “1396a(a)(13)(A)”.

Subsec. (a)(2)(D). Pub. L. 105-33, §4721(c), added subpar. (D).

Subsec. (e)(1). Pub. L. 105-33, §4711(c)(2), substituted “1396a(a)(13)(A)(iv)” for “1396a(a)(13)(A)”.

Subsec. (f). Pub. L. 105-33, §4721(a)(1), amended heading and text of subsec. (f) generally. Prior to amendment, subsec. (f) related to denial of Federal financial participation for payments in excess of certain limits.

Subsec. (h). Pub. L. 105-33, §4721(b), added subsec. (h).

Subsec. (i). Pub. L. 105-33, §4721(d), added subsec. (i).

1993—Subsec. (a)(1)(A). Pub. L. 103-66, §13621(a)(1)(A), substituted “requirements” for “requirement”.

Subsec. (b)(1). Pub. L. 103-66, §13621(a)(1)(B), substituted “requirements” for “requirement” in introductory provisions.

Subsec. (c). Pub. L. 103-66, §13621(b)(2)(A), substituted “subsections (f) and (g)” for “subsection (f)” in introductory provisions.

Subsec. (d). Pub. L. 103-66, §13621(a)(1)(C), substituted “Requirements” for “Requirement” in heading.

Subsec. (d)(3). Pub. L. 103-66, §13621(a)(1)(D), added par. (3).

Subsec. (e)(1)(C). Pub. L. 103-66, §13621(a)(1)(E), added cl. (C).

Subsec. (e)(2)(A). Pub. L. 103-66, §13621(a)(1)(F)(i), inserted “(other than the last sentence of subsection (c) of this section)” before “shall not apply”.

Subsec. (e)(2)(C). Pub. L. 103-66, §13621(a)(1)(F)(ii)-(iv), added subpar. (C).

Subsec. (e)(2)(D). Pub. L. 103-66, §13621(b)(2)(B), added subpar. (D).

Subsec. (g). Pub. L. 103-66, §13621(b)(1), added subsec. (g).

1991—Subsec. (a)(2)(B). Pub. L. 102-234, §3(b)(2)(A)(i), substituted “subsections (c) and (f)” for “subsection (c)”.

Subsec. (b)(4). Pub. L. 102-234, §3(c), added par. (4).

Subsec. (c). Pub. L. 102-234, §3(b)(2)(A)(ii), substituted “Subject to subsection (f) of this section, in order” for “In order”.

Subsec. (f). Pub. L. 102-234, §3(b)(1), added subsec. (f).

1990—Subsec. (b)(2). Pub. L. 101-508, §4702(a), inserted at end “In this paragraph, the term ‘inpatient day’ includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.”

Subsec. (c)(2). Pub. L. 101-508, §4703(c), inserted before semicolon at end “or the hospital’s low-income utilization rate (as defined in paragraph (b)(3) of this section)”.

Subsec. (c)(3). Pub. L. 101-508, §4703(a), added par. (3).

Subsec. (e)(2). Pub. L. 101-508, §4703(b), struck out “during the 3-year period” before “beginning on”.

1989—Subsec. (e)(1). Pub. L. 101-239 designated portion of existing provisions as cls. (A) and (B), and in cl. (A) designated existing provisions as subcl. (i) and added subcl. (ii).

1988—Pub. L. 100-360, §411(k)(6)(A)-(B)(ix), as amended by Pub. L. 100-485, §608(d)(26)(F), amended Pub. L. 100-203, §4112, so as to redesignate section 4112 of Pub. L. 100-203 as this section.

Subsec. (a). Pub. L. 100-360, §411(k)(6)(B)(iv), struck out “of Health and Human Services” after “to the Secretary” wherever appearing in pars. (1) and (2).

Subsec. (a)(1). Pub. L. 100-360, §411(k)(6)(B)(ii), (iii), substituted “A State plan under this subchapter” for “A State’s plan under title XIX of the Social Security Act”, and made technical amendment to reference to section 1396a(a)(13)(A) of this title involving underlying provisions of original act.

Subsec. (a)(2)(A). Pub. L. 100-360, §411(k)(6)(A)(i), substituted “April 1, 1989” for “such date” and inserted before period at end “, effective for inpatient hospital services provided on or after July 1, 1989”.

Subsec. (a)(2)(B). Pub. L. 100-360, §411(k)(6)(A)(ii), substituted “April 1, 1990” for “such date” and inserted before period at end “, effective for inpatient hospital services provided on or after July 1, 1990”.

Subsec. (a)(2)(C). Pub. L. 100-485, §608(d)(15)(C), realigned the margin of subpar. (C).

Pub. L. 100-360, §302(b)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 100-360, §411(k)(6)(A)(iii), inserted par. (3) designation and substituted “90 days after the date a State submits an amendment” for “June 30 of each year in which the State is required to submit an amendment”.

Subsec. (a)(4). Pub. L. 100-360, §411(k)(6)(A)(iii)(II), (III), (B)(v), inserted par. (4) designation and made technical amendment to reference to section 1396n(b)(4) of this title involving underlying provisions of original act.

Subsec. (b)(2). Pub. L. 100-360, §411(k)(6)(A)(iv), substituted “a State plan” for “the State plan”.

Pub. L. 100-360, §411(k)(6)(B)(vi), as amended by Pub. L. 100-485, §608(d)(26)(F), substituted “under this chapter” for “under subchapter XIX of this chapter”.

Subsec. (b)(3). Pub. L. 100-360, §411(k)(6)(B)(vi), as amended by Pub. L. 100-485, §608(d)(26)(F), substituted “under this subchapter” for “under subchapter XIX of this chapter” in last sentence.

Subsec. (b)(3)(A)(i). Pub. L. 100-360, §411(k)(6)(B)(vi), as amended by Pub. L. 100-485, §608(d)(26)(F), substituted “under this subchapter” for “under subchapter XIX of this chapter”.

Subsec. (b)(3)(B)(i). Pub. L. 100-485, §608(d)(26)(D), inserted “of subparagraph (A)” after “clause (i)(II)”.

Pub. L. 100-360, §411(k)(6)(A)(v), inserted “, less the portion of any cash subsidies described in clause (i)(II) in the period reasonably attributable to inpatient hospital services” after “charity care in a period”.

Subsec. (c). Pub. L. 100-485, §608(d)(26)(E), substituted “this subsection” for “subsection (c)” in concluding provisions.

Pub. L. 100-360, §411(k)(6)(A)(vi)(I), (II), (V), in concluding provisions, substituted “paragraphs (1)(B) and (2)(A) of subsection (a) of this section” for “paragraphs (2)(A) and (2)(B)”, “such paragraph (1)(B)” for “paragraph (2)(A)”, and “such paragraph (2)(A)” for “paragraph (2)(B)” and inserted “at least” before “one-third” and “two-thirds”.

Pub. L. 100-360, §411(k)(6)(A)(vi)(VI), inserted at end “In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children’s hospitals), in computing the hospital’s disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.”

Subsec. (c)(1). Pub. L. 100-360, §411(k)(6)(A)(vi)(III), inserted “at least” after “equal to”.

Subsec. (c)(2). Pub. L. 100-360, §411(k)(6)(A)(vi)(IV), as amended by Pub. L. 100-485, §608(d)(26)(A), inserted “(without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section)” after “payment) and”.

Subsec. (d)(1). Pub. L. 100-360, §411(k)(6)(B)(vi), as amended by Pub. L. 100-485, §608(d)(26)(F), substituted “under this subchapter” for “under subchapter XIX of this chapter”.

Subsec. (d)(2)(B). Pub. L. 100-360, §411(k)(6)(B)(vii), made technical amendment to reference to section 1395ww of this title involving underlying provisions of original Act.

Subsec. (e). Pub. L. 100-360, §411(k)(6)(A)(vii), as amended by Pub. L. 100-485, §608(d)(26)(B), (C), designated existing provisions as par. (1), inserted “based on a pooling arrangement involving a majority of the hospitals participating under the plan” after first reference to “payment adjustments”, added par. (2) and substituted “statewide” for “Statewide” in par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-148, title II, §2551(b), Mar. 23, 2010, 124 Stat. 314, which provided that the amendments made by subsection (a), amending this section, were effective on Oct. 1, 2011, was repealed by Pub. L. 111-148, title X, §10201(f), Mar. 23, 2010, 124 Stat. 922.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111-3, set out as an Effective Date note under section 1396 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-171, title VI, §6054(b), Feb. 8, 2006, 120 Stat. 96, provided that: “The amendments made by subsection (a) [amending this section] shall take effect as if enacted on October 1, 2005, and shall only apply to disproportionate share hospital adjustment expenditures applicable to fiscal year 2006 and subsequent fiscal years made on or after that date.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(6) [title VII, §701(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-570, provided that: “The amendments made by paragraphs (1) and (2) [amending this section] take effect on the date the final regulation required under section 705(a) [114 Stat. 2763A-575] (relating to the application of an aggregate upper payment limit test for State medicaid spending for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services provided by government facilities that are not State-owned or operated facilities) is published in the Federal Register.” [The final regulation was published Jan. 12, 2001, 66 Fed. Reg. 3147.]

Pub. L. 106-554, §1(a)(6) [title VII, §701(b)(3)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-571, provided that: “The amendments made by paragraph (2) [amending this section] shall apply to payments made on or after January 1, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(6) [title VI, §601(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-394, provided that: “The amendments made by subsection (a) [amending this section] take effect on October 1, 1999, and applies [sic] to expenditures made on or after such date.”

Amendment by section 1000(a)(6) [title VI, §608(s)] of Pub. L. 106-113 effective Nov. 29, 1999, see section 1000(a)(6) [title VI, §608(bb)] of Pub. L. 106-113, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4711(c)(2) of Pub. L. 105-33 effective Aug. 5, 1997, and applicable to payment for items and services furnished on or after Oct. 1, 1997, see section 4711(d) of Pub. L. 105-33, set out as a note under 1396a of this title.

Section 4721(a)(2) of Pub. L. 105-33 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to payment adjustments attributable to DSH allotments for fiscal years beginning with fiscal year 1998.”

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13621(a)(2) of Pub. L. 103-66 provided that: “The amendments made by this subsection [amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

“(A) the end of the State fiscal year that ends during 1994, or

“(B) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995; without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.”

Section 13621(b)(3) of Pub. L. 103-66 provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection

[amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

“(i) the end of the State fiscal year that ends during 1994, or

“(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

“(B) DELAY IN IMPLEMENTATION FOR PRIVATE HOSPITALS.—With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by Pub. L. 102-234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102-234, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4702(b) of Pub. L. 101-508 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1990.”

Section 4703(d) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 412(a)(2)[4112(a)(2)] of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203, enacting this section].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, see section 608(g)(1) of Pub. L. 100-485, set out as a note under section 704 of this title.

Amendment by section 302(b)(2) of Pub. L. 100-360 effective July 1, 1988, see section 302(f)(2) of Pub. L. 100-360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by section 411(k)(6)(A)-(B)(ix) of Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

APPLICATION OF MEDICAID DSH TRANSITION RULE TO PUBLIC HOSPITALS IN ALL STATES

Pub. L. 106-554, §1(a)(6) [title VII, §701(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-571, provided that:

“(1) IN GENERAL.—During the period described in paragraph (3), with respect to a State, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 514) [set out as a note below], as amended by section 607 of BBRA [Pub. L. 106-113, §1000(a)(6) [title VI, §607(a)]] (113 Stat. 1501A-396), shall be applied as though—

“(A) ‘September 30, 2002’ were substituted for ‘July 1, 1997’ each place it appears;

“(B) ‘hospitals owned or operated by a State (as defined for purposes of title XIX of such Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined)’ were substituted for ‘the State of California’;

“(C) paragraph (3) were redesignated as paragraph (4);

“(D) ‘and’ were omitted from the end of paragraph (2); and

“(E) the following new paragraph were inserted after paragraph (2):

“(3) ‘(as defined in subparagraph (B) but without regard to clause (ii) of that subparagraph and subject to subsection (d))’ were substituted for ‘(as defined in subparagraph (B))’ in subparagraph (A) of such section; and’.

“(2) SPECIAL RULE.—With respect to California, section 4721(e) of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 514), as so amended, shall be applied without regard to paragraph (1).

“(3) PERIOD DESCRIBED.—The period described in this paragraph is the period that begins, with respect to a State, on the first day of the first State fiscal year that begins after September 30, 2002, and ends on the last day of the succeeding State fiscal year.

“(4) APPLICATION TO WAIVERS.—With respect to a State operating under a waiver of the requirements of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under section 1115 of such Act (42 U.S.C. 1315), the amount by which any payment adjustment made by the State under title XIX of such Act (42 U.S.C. 1396 et seq.), after the application of section 4721(e) of the Balanced Budget Act of 1997 under paragraph (1) to such State, exceeds the costs of furnishing hospital services provided by hospitals described in such section shall be fully reflected as an increase in the baseline expenditure limit for such waiver.”

ASSISTANCE FOR CERTAIN PUBLIC HOSPITALS

Pub. L. 106-554, §1(a)(6) [title VII, §701(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-571, provided that:

“(1) IN GENERAL.—Beginning with fiscal year 2002, notwithstanding section 1923(f) of the Social Security Act (42 U.S.C. 1396r-4(f)) and subject to paragraph (3), with respect to a State, payment adjustments made under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) [this subchapter] to a hospital described in paragraph (2) shall be made without regard to the DSH allotment limitation for the State determined under section 1923(f) of that Act (42 U.S.C. 1396r-4(f)).

“(2) HOSPITAL DESCRIBED.—A hospital is described in this paragraph if the hospital—

“(A) is owned or operated by a State (as defined for purposes of title XIX of the Social Security Act [this subchapter]), or by an instrumentality or a unit of government within a State (as so defined);

“(B) as of October 1, 2000—

“(i) is in existence and operating as a hospital described in subparagraph (A); and

“(ii) is not receiving disproportionate share hospital payments from the State in which it is located under title XIX of such Act [this subchapter]; and

“(C) has a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r-4(b)(3))) in excess of 65 percent.

“(3) LIMITATION ON EXPENDITURES.—

“(A) IN GENERAL.—With respect to any fiscal year, the aggregate amount of Federal financial participation that may be provided for payment adjustments described in paragraph (1) for that fiscal year for all States may not exceed the amount described in subparagraph (B) for the fiscal year.

“(B) AMOUNT DESCRIBED.—The amount described in this subparagraph for a fiscal year is as follows:

“(i) For fiscal year 2002, \$15,000,000.

“(ii) For fiscal year 2003, \$176,000,000.

“(iii) For fiscal year 2004, \$269,000,000.

“(iv) For fiscal year 2005, \$330,000,000.

“(v) For fiscal year 2006 and each fiscal year thereafter, \$375,000,000.”

DSH PAYMENT ACCOUNTABILITY STANDARDS

Pub. L. 106-554, §1(a)(6) [title VII, §701(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-572, provided that: “Not later than September 30, 2002, the Secretary of Health and

Human Services shall implement accountability standards to ensure that Federal funds provided with respect to disproportionate share hospital adjustments made under section 1923 of the Social Security Act (42 U.S.C. 1396r-4) are used to reimburse States and hospitals eligible for such payment adjustments for providing uncompensated health care to low-income patients and are otherwise made in accordance with the requirements of section 1923 of that Act.”

DSH ALLOTMENTS FOR SPECIFIC YEARS

Pub. L. 105-277, div. A, § 101(f) [title VII, § 702], Oct. 21, 1998, 112 Stat. 2681-337, 2681-389, provided that: “The amount of the DSH allotment for the State of Minnesota for fiscal year 1999, specified in the table under section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] (as amended by section 4721(a)(1) of Public Law 105-33) is deemed to be \$33,000,000.”

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105-78, title VI, § 601, Nov. 13, 1997, 111 Stat. 1519.

Pub. L. 105-277, div. A, § 101(f) [title VII, § 703], Oct. 21, 1998, 112 Stat. 2681-337, 2681-389, provided that: “The amount of the DSH allotment for the State of New Mexico for fiscal year 1999, specified in the table under section 1923(f)(2) of the Social Security Act [subsection (f)(2) of this section] (as amended by section 4721(a)(1) of Public Law 105-33) is deemed to be \$9,000,000.”

Pub. L. 105-277, div. A, § 101(f) [title VII, § 704], Oct. 21, 1998, 112 Stat. 2681-337, 2681-389, provided that: “Notwithstanding section 1923(f)(2) of the Social Security Act (42 U.S.C. 1396r-4(f)(2)) (as amended by section 4721(a)(1) of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 511)), the amount of the DSH allotment for Wyoming for fiscal year 1999 is deemed to be \$95,000.”

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105-78, title VI, § 602, Nov. 13, 1997, 111 Stat. 1519.

CALIFORNIA TRANSITION RULE

Pub. L. 105-33, title IV, § 4721(e), Aug. 5, 1997, 111 Stat. 514, as amended by Pub. L. 106-113, div. B, § 1000(a)(6) [title VI, § 607(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-396, provided that: “Effective July 1, 1997, section 1923(g)(2) of the Social Security Act (42 U.S.C. 1396r-4(g)(2)) shall be applied to the State of California as though—

“(1) ‘(or that begins on or after July 1, 1997)’ were inserted in subparagraph (A) of such section after ‘January 1, 1995.’;

“(2) ‘(or 175 percent in the case of a State fiscal year that begins on or after July 1, 1997)’ were inserted in subparagraph (A) of such section after ‘200 percent.’; and

“(3) effective for State fiscal years that begin on or after July 1, 1999, ‘(or (b)(1)(B))’ were inserted in section 1923(g)(2)(B)(ii)(I) after ‘(b)(1)(A).’”

[Pub. L. 106-113, div. B, § 1000(a)(6) [title VI, § 607(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-396, provided that: “The amendments made by subsection (a) [amending section 4721(e) of Pub. L. 105-33, set out above] shall take effect as if included in the enactment of section 4721(e) of BBA [the Balanced Budget Act of 1997, Pub. L. 105-33].”]

STUDY OF DSH PAYMENT ADJUSTMENTS

Section 3(d) of Pub. L. 102-234 directed Prospective Payment Assessment Commission to conduct a study concerning feasibility and desirability of establishing maximum and minimum payment adjustments under subsec. (c) of this section for hospitals deemed disproportionate share hospitals under State medicare plans, and criteria (other than criteria described in clause (i) or (ii) of subsec. (f)(1)(D)) that are appropriate for the designation of disproportionate share hospitals under this section, specified items to be included in study, and directed that, not later than Jan. 1, 1994,

Commission submit a report to Committee on Finance of Senate and Committee on Energy and Commerce of House of Representatives, such report to include such recommendations respecting designation of disproportionate share hospitals and the establishment of maximum and minimum payment adjustments for such hospitals under this section as may be appropriate.

§ 1396r-5. Treatment of income and resources for certain institutionalized spouses

(a) Special treatment for institutionalized spouses

(1) Supersedes other provisions

In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1) of this section), the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them.

(2) No comparable treatment required

Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1396a(a) of this title, require such treatment for other individuals.

(3) Does not affect certain determinations

Except as this section specifically provides, this section does not apply to—

(A) the determination of what constitutes income or resources, or

(B) the methodology and standards for determining and evaluating income and resources.

(4) Application in certain States and territories

(A) Application in States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(B) No application in commonwealths and territories

This section shall only apply to a State that is one of the 50 States or the District of Columbia.

(5) Application to individuals receiving services under PACE programs

This section applies to individuals receiving institutional or noninstitutional services under a PACE demonstration waiver program (as defined in section 1396u-4(a)(7) of this title) or under a PACE program under section 1396u-4 or 1395eee of this title.

(b) Rules for treatment of income

(1) Separate treatment of income

During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.