

section (a) [amending this section] shall apply to payments under such contract (A) 30 days after the first date (after such date of enactment) the provider of services may unilaterally terminate the contract, or (B) one year after the date of the enactment of this Act, whichever is earlier.”

EFFECTIVE DATE OF REGULATIONS

Pub. L. 97-248, title I, §108(b), formerly §108(c), Sept. 3, 1982, 96 Stat. 338, as redesignated by Pub. L. 97-448, title III, §309(a)(3), Jan. 12, 1983, 96 Stat. 2408, provided that: “The Secretary of Health and Human Services shall first promulgate regulations to carry out section 1887(a) of the Social Security Act [42 U.S.C. 1395xx(a)] not later than October 1, 1982. Such regulations shall become effective on October 1, 1982, and shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] to a hospital or skilled nursing facility resulting from such regulations shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.”

§ 1395yy. Payment to skilled nursing facilities for routine service costs

(a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appro-

appropriate wage index, and shall, for cost reporting periods beginning on or after October 1, 1992, on or after October 1, 1995, and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.

(b) Excess overhead allocations for hospital-based facilities

With respect to a hospital-based skilled nursing facility, the Secretary may not recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations.

(c) Adjustments in limitations; publication of data

The Secretary may make adjustments in the limits set forth in subsection (a) with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.

(d) Access to skilled nursing facilities

(1) Subject to subsection (e), any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs of extended care services provided in a cost reporting period if such facility had, in the preceding cost reporting period, fewer than 1,500 patient days with respect to which payments were made under this subchapter. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1395x(v) of this title and subsections (a) through (c) of this section and capital-related costs pursuant to section 1395x(v) of this title. This subsection shall not apply to a facility for any cost reporting period immediately following a cost reporting period in which such facility had 1,500 or more patient days with respect to which payments were made under this subchapter, without regard to whether payments were made under this subsection during such preceding cost reporting period.

(2)(A) The amount of the payment under this section shall be determined on a per diem basis.

(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—

(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) and adjusted for different area wage levels, and

(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem rea-

sonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) and adjusted for different area wage levels.

(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a), and the term “region” shall have the same meaning as under section 1395ww(d)(2)(D) of this title.

(4) The Secretary shall establish the prospective payment amounts for cost reporting periods beginning in a fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1395x(v)(1)(E) of this title (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(e) Prospective payment

(1) Payment provision

Notwithstanding any other provision of this subchapter, subject to paragraphs (7), (11), and (12), the amount of the payment for all costs (as defined in paragraph (2)(B)) of covered skilled nursing facility services (as defined in paragraph (2)(A)) for each day of such services furnished—

(A) in a cost reporting period during the transition period (as defined in paragraph (2)(E)), is equal to the sum of—

(i) the non-Federal percentage of the facility-specific per diem rate (computed under paragraph (3)), and

(ii) the Federal percentage of the adjusted Federal per diem rate (determined under paragraph (4)) applicable to the facility; and

(B) after the transition period is equal to the adjusted Federal per diem rate applicable to the facility.

(2) Definitions

For purposes of this subsection:

(A) Covered skilled nursing facility services

(i) In general

The term “covered skilled nursing facility services”—

(I) means post-hospital extended care services as defined in section 1395x(i) of this title for which benefits are provided under part A; and

(II) includes all items and services (other than items and services described in clauses (ii), (iii), and (iv)) for which payment may be made under part B and which are furnished to an individual who is a resident of a skilled nursing facility during the period in which the individual is provided covered post-hospital extended care services.

(ii) Services excluded

Services described in this clause are physicians’ services, services described by clauses (i) and (ii) of section 1395x(s)(2)(K) of this title, certified nurse-midwife services, qualified psychologist services, services of a certified registered nurse anesthetist, items and services described in subparagraphs (F) and (O) of section 1395x(s)(2) of this title, telehealth services furnished under section 1395m(m)(4)(C)(ii)(VII) of this title, and, only with respect to services furnished during 1998, the transportation costs of electrocardiogram equipment for electrocardiogram test services (HCPCS Code R0076). Services described in this clause do not include any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional.

(iii) Exclusion of certain additional items and services

Items and services described in this clause are the following:

(I) Ambulance services furnished to an individual in conjunction with renal dialysis services described in section 1395x(s)(2)(F) of this title.

(II) Chemotherapy items (identified as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600 (and as subsequently modified by the Secretary)) and any additional chemotherapy items identified by the Secretary.

(III) Chemotherapy administration services (identified as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542 (and as subsequently modified by the Secretary)) and any additional chemotherapy administration services identified by the Secretary.

(IV) Radioisotope services (identified as of July 1, 1999, by HCPCS codes 79030-79440 (and as subsequently modified by the Secretary)) and any additional radioisotope services identified by the Secretary.

(V) Customized prosthetic devices (commonly known as artificial limbs or components of artificial limbs) under the following HCPCS codes (as of July 1, 1999 (and as subsequently modified by the Secretary)), and any additional customized prosthetic devices identified by the Secretary, if delivered to an inpatient for use during the stay in the skilled nursing facility and intended to be used by the individual after discharge from the facility: L5050-L5340; L5500-L5611; L5613-L5986; L5988; L6050-L6370; L6400-L6880; L6920-L7274; and L7362-7366.

(iv) Exclusion of certain rural health clinic and federally qualified health center services

Services described in this clause are—

(I) rural health clinic services (as defined in paragraph (1) of section 1395x(aa) of this title); and

(II) federally qualified health center services (as defined in paragraph (3) of such section);

that would be described in clause (ii) if such services were furnished by an individual not affiliated with a rural health clinic or a federally qualified health center.

(B) All costs

The term “all costs” means routine service costs, ancillary costs, and capital-related costs of covered skilled nursing facility services, but does not include costs associated with approved educational activities.

(C) Non-Federal percentage; Federal percentage

For—

(i) the first cost reporting period (as defined in subparagraph (D)) of a facility, the “non-Federal percentage” is 75 percent and the “Federal percentage” is 25 percent;

(ii) the next cost reporting period of such facility, the “non-Federal percentage” is 50 percent and the “Federal percentage” is 50 percent; and

(iii) the subsequent cost reporting period of such facility, the “non-Federal percentage” is 25 percent and the “Federal percentage” is 75 percent.

(D) First cost reporting period

The term “first cost reporting period” means, with respect to a skilled nursing facility, the first cost reporting period of the facility beginning on or after July 1, 1998.

(E) Transition period

(i) In general

The term “transition period” means, with respect to a skilled nursing facility, the 3 cost reporting periods of the facility

beginning with the first cost reporting period.

(ii) Treatment of new skilled nursing facilities

In the case of a skilled nursing facility that first received payment for services under this subchapter on or after October 1, 1995, payment for such services shall be made under this subsection as if all services were furnished after the transition period.

(3) Determination of facility specific per diem rates

The Secretary shall determine a facility-specific per diem rate for each skilled nursing facility not described in paragraph (2)(E)(ii) for a cost reporting period as follows:

(A) Determining base payments

The Secretary shall determine, on a per diem basis, the total of—

(i) the allowable costs of extended care services for the facility for cost reporting periods beginning in fiscal year 1995, including costs associated with facilities described in subsection (d), with appropriate adjustments (as determined by the Secretary) to non-settled cost reports or, in the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS-III), the RUGS-III rate received by the facility during the cost reporting period beginning in 1997, and

(ii) an estimate of the amounts that would be payable under part B (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during the applicable cost reporting period described in clause (i) to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

In making appropriate adjustments under clause (i), the Secretary shall take into account exceptions and shall take into account exemptions but, with respect to exemptions, only to the extent that routine costs do not exceed 150 percent of the routine cost limits otherwise applicable but for the exemption.

(B) Update to first cost reporting period

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the applicable cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1.0 percentage point.

(C) Updating to applicable cost reporting period

The Secretary shall update the amount determined under subparagraph (B) for each cost reporting period beginning with the first cost reporting period and up to and including the cost reporting period involved by a factor equal to the facility-specific update factor.

(D) Facility-specific update factor

For purposes of this paragraph, the “facility-specific update factor” for cost reporting periods beginning during—

(i) during each of fiscal years 1998 and 1999, is equal to the skilled nursing facility market basket percentage increase for such fiscal year minus 1 percentage point, and

(ii) during each subsequent fiscal year is equal to the skilled nursing facility market basket percentage increase for such fiscal year.

(4) Federal per diem rate**(A) Determination of historical per diem for facilities**

For each skilled nursing facility that received payments for post-hospital extended care services during a cost reporting period beginning in fiscal year 1995 and that was subject to (and not exempted from) the per diem limits referred to in paragraph (1) or (2) of subsection (a) (and facilities described in subsection (d)), the Secretary shall estimate, on a per diem basis for such cost reporting period, the total of—

(i) the allowable costs of extended care services (excluding exceptions payments) for the facility for cost reporting periods beginning in 1995 with appropriate adjustments (as determined by the Secretary) to non-settled cost reports, and

(ii) an estimate of the amounts that would be payable under part B (disregarding any applicable deductibles, coinsurance, and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during such period to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

(B) Update to first fiscal year

The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase reduced (on an annualized basis) by 1 percentage point.

(C) Computation of standardized per diem rate

The Secretary shall standardize the amount updated under subparagraph (B) for each facility by—

(i) adjusting for variations among facilities by area in the average facility wage level per diem, and

(ii) adjusting for variations in case mix per diem among facilities.

(D) Computation of weighted average per diem rates**(i) All facilities**

The Secretary shall compute a weighted average per diem rate for all facilities by

computing an average of the standardized amounts computed under subparagraph (C), weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(ii) Freestanding facilities

The Secretary shall compute a weighted average per diem rate for freestanding facilities by computing an average of the standardized amounts computed under subparagraph (C) only for such facilities, weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A).

(iii) Separate computation

The Secretary may compute and apply such averages separately for facilities located in urban and rural areas (as defined in section 1395ww(d)(2)(D) of this title).

(E) Updating**(i) Initial period**

For the initial period beginning on July 1, 1998, and ending on September 30, 1999, the Secretary shall compute for skilled nursing facilities an unadjusted Federal per diem rate equal to the average of the weighted average per diem rates computed under clauses (i) and (ii) of subparagraph (D), increased by skilled nursing facility market basket percentage change for such period minus 1 percentage point.

(ii) Subsequent fiscal years

The Secretary shall compute an unadjusted Federal per diem rate equal to the Federal per diem rate computed under this subparagraph—

(I) for fiscal year 2000, the rate computed for the initial period described in clause (i), increased by the skilled nursing facility market basket percentage change for the initial period minus 1 percentage point;

(II) for fiscal year 2001, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year;

(III) for each of fiscal years 2002 and 2003, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved minus 0.5 percentage points; and

(IV) for each subsequent fiscal year, the rate computed for the previous fiscal year increased by the skilled nursing facility market basket percentage change for the fiscal year involved.

(F) Adjustment for case mix creep

Insofar as the Secretary determines that the adjustments under subparagraph (G)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection

during the fiscal year that are a result of changes in the coding or classification of residents that do not reflect real changes in case mix, the Secretary may adjust unadjusted Federal per diem rates for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.

(G) Determination of Federal rate

The Secretary shall compute for each skilled nursing facility for each fiscal year (beginning with the initial period described in subparagraph (E)(i)) an adjusted Federal per diem rate equal to the unadjusted Federal per diem rate determined under subparagraph (E), as adjusted under subparagraph (F), and as further adjusted as follows:

(i) Adjustment for case mix

The Secretary shall provide for an appropriate adjustment to account for case mix. Such adjustment shall be based on a resident classification system, established by the Secretary, that accounts for the relative resource utilization of different patient types. The case mix adjustment shall be based on resident assessment data and other data that the Secretary considers appropriate.

(ii) Adjustment for geographic variations in labor costs

The Secretary shall adjust the portion of such per diem rate attributable to wages and wage-related costs for the area in which the facility is located compared to the national average of such costs using an appropriate wage index as determined by the Secretary. Such adjustment shall be done in a manner that does not result in aggregate payments under this subsection that are greater or less than those that would otherwise be made if such adjustment had not been made.

(iii) Adjustment for exclusion of certain additional items and services

The Secretary shall provide for an appropriate proportional reduction in payments so that beginning with fiscal year 2001, the aggregate amount of such reductions is equal to the aggregate increase in payments attributable to the exclusion effected under clause (iii) of paragraph (2)(A).

(H) Publication of information on per diem rates

The Secretary shall provide for publication in the Federal Register, before May 1, 1998 (with respect to fiscal period described in subparagraph (E)(i)) and before the August 1 preceding each succeeding fiscal year (with respect to that succeeding fiscal year), of—

(i) the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year,

(ii) the case mix classification system to be applied under subparagraph (G)(i) with respect to such services during the fiscal year, and

(iii) the factors to be applied in making the area wage adjustment under subparagraph (G)(ii) with respect to such services.

(5) Skilled nursing facility market basket index and percentage

For purposes of this subsection:

(A) Skilled nursing facility market basket index

The Secretary shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.

(B) Skilled nursing facility market basket percentage

(i) In general

Subject to clauses (ii), (iii), and (iv), the term “skilled nursing facility market basket percentage” means, for a fiscal year or other annual period and as calculated by the Secretary, the percentage change in the skilled nursing facility market basket index (established under subparagraph (A)) from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved.

(ii) Adjustment

For fiscal year 2012 and each subsequent fiscal year, subject to clauses (iii) and (iv), after determining the percentage described in clause (i), the Secretary shall reduce such percentage by the productivity adjustment described in section 1395ww(b)(3)(B)(xi)(II) of this title. The application of the preceding sentence may result in such percentage being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(iii) Special rule for fiscal year 2018

For fiscal year 2018 (or other similar annual period specified in clause (i)), the skilled nursing facility market basket percentage, after application of clause (ii), is equal to 1 percent.

(iv) Special rule for fiscal year 2019

For fiscal year 2019 (or other similar annual period specified in clause (i)), the skilled nursing facility market basket percentage, after application of clause (ii), is equal to 2.4 percent.

(6) Reporting of assessment and quality data

(A) Reduction in update for failure to report

(i) In general

For fiscal years beginning with fiscal year 2018, in the case of a skilled nursing facility that does not submit data, as applicable, in accordance with subclauses (II) and (III) of subparagraph (B)(i) with respect to such a fiscal year, after determining the percentage described in paragraph (5)(B)(i), and after application of clauses (ii) and (iii) of paragraph (5)(B), the Sec-

retary shall reduce such percentage for payment rates during such fiscal year by 2 percentage points.

(ii) Special rule

The application of this subparagraph may result in the percentage described in paragraph (5)(B)(i), after application of clauses (ii) and (iii) of paragraph (5)(B), being less than 0.0 for a fiscal year, and may result in payment rates under this subsection for a fiscal year being less than such payment rates for the preceding fiscal year.

(iii) Noncumulative application

Any reduction under clause (i) shall apply only with respect to the fiscal year involved and the Secretary shall not take into account such reduction in computing the payment amount under this subsection for a subsequent fiscal year.

(B) Assessment and measure data

(i) In general

A skilled nursing facility, or a facility (other than a critical access hospital) described in paragraph (7)(B), shall submit to the Secretary, in a manner and within the timeframes prescribed by the Secretary—

(I) subject to clause (iii), the resident assessment data necessary to develop and implement the rates under this subsection;

(II) for fiscal years beginning on or after the specified application date (as defined in subsection (a)(2)(E) of section 139577 of this title), as applicable with respect to skilled nursing facilities and quality measures under subsection (c)(1) of such section and measures under subsection (d)(1) of such section, data on such quality measures under such subsection (c)(1) and any necessary data specified by the Secretary under such subsection (d)(1); and

(III) for fiscal years beginning on or after October 1, 2018, standardized patient assessment data required under subsection (b)(1) of section 139577 of this title.

(ii) Use of standard instrument

For purposes of meeting the requirement under clause (i), a skilled nursing facility, or a facility (other than a critical access hospital) described in paragraph (7)(B), may submit the resident assessment data required under section 1395i-3(b)(3) of this title, using the standard instrument designated by the State under section 1395i-3(e)(5) of this title.

(iii) Non-duplication

To the extent data submitted under subclause (II) or (III) of clause (i) duplicates other data required to be submitted under clause (i)(I), the submission of such data under such a subclause shall be in lieu of the submission of such data under clause (i)(I). The previous sentence shall not apply insofar as the Secretary determines

it is necessary to avoid a delay in the implementation of section 139577 of this title, taking into account the different specified application dates under subsection (a)(2)(E) of such section.

(7) Treatment of medicare swing bed hospitals

(A) Transition

Subject to subparagraph (C), the Secretary shall determine an appropriate manner in which to apply this subsection to the facilities described in subparagraph (B) (other than critical access hospitals), taking into account the purposes of this subsection, and shall provide that at the end of the transition period (as defined in paragraph (2)(E)) such facilities shall be paid only under this subsection. Payment shall not be made under this subsection to such facilities for cost reporting periods beginning before such date (not earlier than July 1, 1999) as the Secretary specifies.

(B) Facilities described

The facilities described in this subparagraph are facilities that have in effect an agreement described in section 1395tt of this title.

(C) Exemption from PPS of swing-bed services furnished in critical access hospitals

The prospective payment system established under this subsection shall not apply to services furnished by a critical access hospital pursuant to an agreement under section 1395tt of this title.

(8) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, 1395oo of this title, or otherwise of—

(A) the establishment of Federal per diem rates under paragraph (4), including the computation of the standardized per diem rates under paragraph (4)(C), adjustments and corrections for case mix under paragraphs (4)(F) and (4)(G)(i), adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii);

(B) the establishment of facility specific rates before July 1, 1999 (except any determination of costs paid under part A of this subchapter); and

(C) the establishment of transitional amounts under paragraph (7).

(9) Payment for certain services

In the case of an item or service furnished to a resident of a skilled nursing facility or a part of a facility that includes a skilled nursing facility (as determined under regulations) for which payment would (but for this paragraph) be made under part B in an amount determined in accordance with section 13957(a)(2)(B) of this title, the amount of the payment under such part shall be the amount provided under the fee schedule for such item or service. In the case of an item or service described in clause (iii) of paragraph (2)(A) that would be payable under part A but for the exclusion of such item or service under such

clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395i of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).

(10) Required coding

No payment may be made under part B for items and services (other than services described in paragraph (2)(A)(ii)) furnished to an individual who is a resident of a skilled nursing facility or of a part of a facility that includes a skilled nursing facility (as determined under regulations), unless the claim for such payment includes a code (or codes) under a uniform coding system specified by the Secretary that identifies the items or services furnished.

(11) Permitting facilities to waive 3-year transition

Notwithstanding paragraph (1)(A), a facility may elect to have the amount of the payment for all costs of covered skilled nursing facility services for each day of such services furnished in cost reporting periods beginning no earlier than 30 days before the date of such election determined pursuant to paragraph (1)(B).

(12) Adjustment for residents with AIDS

(A) In general

Subject to subparagraph (B), in the case of a resident of a skilled nursing facility who is afflicted with acquired immune deficiency syndrome (AIDS), the per diem amount of payment otherwise applicable (determined without regard to any increase under section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, or under section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000), shall be increased by 128 percent to reflect increased costs associated with such residents.

(B) Sunset

Subparagraph (A) shall not apply on and after such date as the Secretary certifies that there is an appropriate adjustment in the case mix under paragraph (4)(G)(i) to compensate for the increased costs associated with residents described in such subparagraph.

(f) Reporting of direct care expenditures

(1) In general

For cost reports submitted under this subchapter for cost reporting periods beginning on or after the date that is 2 years after March 23, 2010, skilled nursing facilities shall separately report expenditures for wages and benefits for direct care staff (breaking out (at a minimum) registered nurses, licensed professional nurses, certified nurse assistants, and other medical and therapy staff).

(2) Modification of form

The Secretary, in consultation with private sector accountants experienced with Medicare

and Medicaid nursing facility home cost reports, shall redesign such reports to meet the requirement of paragraph (1) not later than 1 year after March 23, 2010.

(3) Categorization by functional accounts

Not later than 30 months after March 23, 2010, the Secretary, working in consultation with the Medicare Payment Advisory Commission, the Medicaid and CHIP Payment and Access Commission, the Inspector General of the Department of Health and Human Services, and other expert parties the Secretary determines appropriate, shall take the expenditures listed on cost reports, as modified under paragraph (1), submitted by skilled nursing facilities and categorize such expenditures, regardless of any source of payment for such expenditures, for each skilled nursing facility into the following functional accounts on an annual basis:

(A) Spending on direct care services (including nursing, therapy, and medical services).

(B) Spending on indirect care (including housekeeping and dietary services).

(C) Capital assets (including building and land costs).

(D) Administrative services costs.

(4) Availability of information submitted

The Secretary shall establish procedures to make information on expenditures submitted under this subsection readily available to interested parties upon request, subject to such requirements as the Secretary may specify under the procedures established under this paragraph.

(g) Skilled nursing facility readmission measure

(1) Readmission measure

Not later than October 1, 2015, the Secretary shall specify a skilled nursing facility all-cause all-condition hospital readmission measure (or any successor to such a measure).

(2) Resource use measure

Not later than October 1, 2016, the Secretary shall specify a measure to reflect an all-condition risk-adjusted potentially preventable hospital readmission rate for skilled nursing facilities.

(3) Measure adjustments

When specifying the measures under paragraphs (1) and (2), the Secretary shall devise a methodology to achieve a high level of reliability and validity, especially for skilled nursing facilities with a low volume of readmissions.

(4) Pre-rulemaking process (measure application partnership process)

The application of the provisions of section 1395aaa-1 of this title shall be optional in the case of a measure specified under paragraph (1) and a measure specified under paragraph (2).

(5) Feedback reports to skilled nursing facilities

Beginning October 1, 2016, and every quarter thereafter, the Secretary shall provide confidential feedback reports to skilled nursing

facilities on the performance of such facilities with respect to a measure specified under paragraph (1) or (2).

(6) Public reporting of skilled nursing facilities

(A) In general

Subject to subparagraphs (B) and (C), the Secretary shall establish procedures for making available to the public by posting on the Nursing Home Compare Medicare website (or a successor website) described in section 1395i-3(i) of this title information on the performance of skilled nursing facilities with respect to a measure specified under paragraph (1) and a measure specified under paragraph (2).

(B) Opportunity to review

The procedures under subparagraph (A) shall ensure that a skilled nursing facility has the opportunity to review and submit corrections to the information that is to be made public with respect to the facility prior to such information being made public.

(C) Timing

Such procedures shall provide that the information described in subparagraph (A) is made publicly available beginning not later than October 1, 2017.

(7) Non-application of Paperwork Reduction Act

Chapter 35 of title 44 (commonly referred to as the “Paperwork Reduction Act of 1995”) shall not apply to this subsection.

(h) Skilled nursing facility value-based purchasing program

(1) Establishment

(A) In general

Subject to the succeeding provisions of this subsection, the Secretary shall establish a skilled nursing facility value-based purchasing program (in this subsection referred to as the “SNF VBP Program”) under which value-based incentive payments are made in a fiscal year to skilled nursing facilities.

(B) Program to begin in fiscal year 2019

The SNF VBP Program shall apply to payments for services furnished on or after October 1, 2018.

(2) Application of measures

(A) In general

The Secretary shall apply the measure specified under subsection (g)(1) for purposes of the SNF VBP Program.

(B) Replacement

For purposes of the SNF VBP Program, the Secretary shall apply the measure specified under (g)(2)¹ instead of the measure specified under (g)(1)¹ as soon as practicable.

(3) Performance standards

(A) Establishment

The Secretary shall establish performance standards with respect to the measure ap-

plied under paragraph (2) for a performance period for a fiscal year.

(B) Higher of achievement and improvement

The performance standards established under subparagraph (A) shall include levels of achievement and improvement. In calculating the SNF performance score under paragraph (4), the Secretary shall use the higher of either improvement or achievement.

(C) Timing

The Secretary shall establish and announce the performance standards established under subparagraph (A) not later than 60 days prior to the beginning of the performance period for the fiscal year involved.

(4) SNF performance score

(A) In general

The Secretary shall develop a methodology for assessing the total performance of each skilled nursing facility based on performance standards established under paragraph (3) with respect to the measure applied under paragraph (2). Using such methodology, the Secretary shall provide for an assessment (in this subsection referred to as the “SNF performance score”) for each skilled nursing facility for each such performance period.

(B) Ranking of SNF performance scores

The Secretary shall, for the performance period for each fiscal year, rank the SNF performance scores determined under subparagraph (A) from low to high.

(5) Calculation of value-based incentive payments

(A) In general

With respect to a skilled nursing facility, based on the ranking under paragraph (4)(B) for a performance period for a fiscal year, the Secretary shall increase the adjusted Federal per diem rate determined under subsection (e)(4)(G) otherwise applicable to such skilled nursing facility (and after application of paragraph (6)) for services furnished by such facility during such fiscal year by the value-based incentive payment amount under subparagraph (B).

(B) Value-based incentive payment amount

The value-based incentive payment amount for services furnished by a skilled nursing facility in a fiscal year shall be equal to the product of—

(i) the adjusted Federal per diem rate determined under subsection (e)(4)(G) otherwise applicable to such skilled nursing facility for such services furnished by the skilled nursing facility during such fiscal year; and

(ii) the value-based incentive payment percentage specified under subparagraph (C) for the skilled nursing facility for such fiscal year.

(C) Value-based incentive payment percentage

(i) In general

The Secretary shall specify a value-based incentive payment percentage for a

¹ So in original. Probably should be preceded by “subsection”.

skilled nursing facility for a fiscal year which may include a zero percentage.

(ii) Requirements

In specifying the value-based incentive payment percentage for each skilled nursing facility for a fiscal year under clause (i), the Secretary shall ensure that—

(I) such percentage is based on the SNF performance score of the skilled nursing facility provided under paragraph (4) for the performance period for such fiscal year;

(II) the application of all such percentages in such fiscal year results in an appropriate distribution of value-based incentive payments under subparagraph (B) such that—

(aa) skilled nursing facilities with the highest rankings under paragraph (4)(B) receive the highest value-based incentive payment amounts under subparagraph (B);

(bb) skilled nursing facilities with the lowest rankings under paragraph (4)(B) receive the lowest value-based incentive payment amounts under subparagraph (B); and

(cc) in the case of skilled nursing facilities in the lowest 40 percent of the ranking under paragraph (4)(B), the payment rate under subparagraph (A) for services furnished by such facility during such fiscal year shall be less than the payment rate for such services for such fiscal year that would otherwise apply under subsection (e)(4)(G) without application of this subsection; and

(III) the total amount of value-based incentive payments under this paragraph for all skilled nursing facilities in such fiscal year shall be greater than or equal to 50 percent, but not greater than 70 percent, of the total amount of the reductions to payments for such fiscal year under paragraph (6), as estimated by the Secretary.

(6) Funding for value-based incentive payments

(A) In general

The Secretary shall reduce the adjusted Federal per diem rate determined under subsection (e)(4)(G) otherwise applicable to a skilled nursing facility for services furnished by such facility during a fiscal year (beginning with fiscal year 2019) by the applicable percent (as defined in subparagraph (B)). The Secretary shall make such reductions for all skilled nursing facilities in the fiscal year involved, regardless of whether or not the skilled nursing facility has been determined by the Secretary to have earned a value-based incentive payment under paragraph (5) for such fiscal year.

(B) Applicable percent

For purposes of subparagraph (A), the term “applicable percent” means, with respect to fiscal year 2019 and succeeding fiscal years, 2 percent.

(7) Announcement of net result of adjustments

Under the SNF VBP Program, the Secretary shall, not later than 60 days prior to the fiscal year involved, inform each skilled nursing facility of the adjustments to payments to the skilled nursing facility for services furnished by such facility during the fiscal year under paragraphs (5) and (6).

(8) No effect in subsequent fiscal years

The value-based incentive payment under paragraph (5) and the payment reduction under paragraph (6) shall each apply only with respect to the fiscal year involved, and the Secretary shall not take into account such value-based incentive payment or payment reduction in making payments to a skilled nursing facility under this section in a subsequent fiscal year.

(9) Public reporting

(A) SNF specific information

The Secretary shall make available to the public, by posting on the Nursing Home Compare Medicare website (or a successor website) described in section 1395i-3(i) of this title in an easily understandable format, information regarding the performance of individual skilled nursing facilities under the SNF VBP Program, with respect to a fiscal year, including—

(i) the SNF performance score of the skilled nursing facility for such fiscal year; and

(ii) the ranking of the skilled nursing facility under paragraph (4)(B) for the performance period for such fiscal year.

(B) Aggregate information

The Secretary shall periodically post on the Nursing Home Compare Medicare website (or a successor website) described in section 1395i-3(i) of this title aggregate information on the SNF VBP Program, including—

(i) the range of SNF performance scores provided under paragraph (4)(A); and

(ii) the number of skilled nursing facilities receiving value-based incentive payments under paragraph (5) and the range and total amount of such value-based incentive payments.

(10) Limitation on review

There shall be no administrative or judicial review under section 1395ff of this title, section 1395oo of this title, or otherwise of the following:

(A) The methodology used to determine the value-based incentive payment percentage and the amount of the value-based incentive payment under paragraph (5).

(B) The determination of the amount of funding available for such value-based incentive payments under paragraph (5)(C)(ii)(III) and the payment reduction under paragraph (6).

(C) The establishment of the performance standards under paragraph (3) and the performance period.

(D) The methodology developed under paragraph (4) that is used to calculate SNF

performance scores and the calculation of such scores.

(E) The ranking determinations under paragraph (4)(B).

(11) Funding for program management

The Secretary shall provide for the one time transfer from the Federal Hospital Insurance Trust Fund established under section 1395i of this title to the Centers for Medicare & Medicaid Services Program Management Account of—

(A) for purposes of subsection (g)(2), \$2,000,000; and

(B) for purposes of implementing this subsection, \$10,000,000.

Such funds shall remain available until expended.

(Aug. 14, 1935, ch. 531, title XVIII, § 1888, as added Pub. L. 98-369, div. B, title III, § 2319(b), July 18, 1984, 98 Stat. 1082; amended Pub. L. 99-272, title IX, §§ 9126(a), (b), 9219(b)(1)(C), Apr. 7, 1986, 100 Stat. 168, 170, 182; Pub. L. 99-514, title XVIII, § 1895(b)(7)(A), (B), Oct. 22, 1986, 100 Stat. 2933; Pub. L. 100-203, title IV, § 4201(b)(2), Dec. 22, 1987, 101 Stat. 1330-174; Pub. L. 101-508, title IV, § 4008(e)(2), (h)(2)(A)(ii), Nov. 5, 1990, 104 Stat. 1388-45, 1388-48; Pub. L. 103-66, title XIII, § 13503(a)(2), (3)(A), Aug. 10, 1993, 107 Stat. 578; Pub. L. 105-33, title IV, §§ 4431, 4432(a), (b)(3), (5)(H), 4511(a)(2)(E), Aug. 5, 1997, 111 Stat. 414, 421, 422, 442; Pub. L. 106-113, div. B, § 1000(a)(6) [title I, §§ 102(a), 103(a), (b), 104(a), 105(a), title III, § 321(g)(1), (k)(18)], Nov. 29, 1999, 113 Stat. 1536, 1501A-325 to 1501A-327, 1501A-366, 1501A-368; Pub. L. 106-554, § 1(a)(6) [title II, § 203(a), title III, § 311(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-481, 2763A-497; Pub. L. 108-173, title IV, § 410(a), title V, § 511(a), Dec. 8, 2003, 117 Stat. 2271, 2298; Pub. L. 110-275, title I, § 149(b), July 15, 2008, 122 Stat. 2549; Pub. L. 111-148, title III, § 3401(b), title VI, § 6104, Mar. 23, 2010, 124 Stat. 481, 711; Pub. L. 113-93, title II, § 215(a), (b), Apr. 1, 2014, 128 Stat. 1048, 1049; Pub. L. 113-185, § 2(c)(4)(A), Oct. 6, 2014, 128 Stat. 1965; Pub. L. 114-10, title IV, § 411(a), Apr. 16, 2015, 129 Stat. 161; Pub. L. 115-123, div. E, title XII, § 53111, Feb. 9, 2018, 132 Stat. 304.)

REFERENCES IN TEXT

Section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, referred to in subsec. (e)(12)(A), is section 1000(a)(6) [title I, § 101] of Pub. L. 106-113, div. B, Nov. 29, 1999, 113 Stat. 1536, 1501A-324, which is not classified to the Code.

Section 314(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, referred to in subsec. (e)(12)(A), is section 1(a)(6) [title III, § 314(a)] of Pub. L. 106-554, Dec. 21, 2000, 114 Stat. 2763, 2763A-499, which is not classified to the Code.

AMENDMENTS

2018—Subsec. (e)(5)(B)(i). Pub. L. 115-123, § 53111(1), substituted “, (iii), and (iv)” for “and (iii)”.

Subsec. (e)(5)(B)(ii). Pub. L. 115-123, § 53111(2), substituted “clauses (iii) and (iv)” for “clause (iii)”.

Subsec. (e)(5)(B)(iv). Pub. L. 115-123, § 53111(3), added cl. (iv).

2015—Subsec. (e)(5)(B)(i). Pub. L. 114-10, § 411(a)(1)(A), substituted “clauses (ii) and (iii)” for “clause (ii)”.

Subsec. (e)(5)(B)(ii). Pub. L. 114-10, § 411(a)(1)(B), inserted “subject to clause (iii),” after “each subsequent fiscal year.”

Subsec. (e)(5)(B)(iii). Pub. L. 114-10, § 411(a)(1)(C), added cl. (iii).

Subsec. (e)(6)(A)(i), (ii). Pub. L. 114-10, § 411(a)(2), substituted “clauses (ii) and (iii) of paragraph (5)(B)” for “paragraph (5)(B)(ii)”.

2014—Subsec. (e)(6). Pub. L. 113-185 amended par. (6) generally. Prior to amendment, text read as follows: “A skilled nursing facility, or a facility described in paragraph (7)(B), shall provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection. For purposes of meeting such requirement, a skilled nursing facility, or a facility described in paragraph (7), may submit the resident assessment data required under section 1395i-3(b)(3) of this title, using the standard instrument designated by the State under section 1395i-3(e)(5) of this title.”

Subsec. (g). Pub. L. 113-93, § 215(a), added subsec. (g).

Subsec. (h). Pub. L. 113-93, § 215(b), added subsec. (h).

2010—Subsec. (e)(5)(B). Pub. L. 111-148, § 3401(b), designated existing provisions as cl. (i), inserted heading, substituted “Subject to clause (ii), the term” for “The term”, and added cl. (ii).

Subsec. (f). Pub. L. 111-148, § 6104, added subsec. (f).

2008—Subsec. (e)(2)(A)(ii). Pub. L. 110-275 inserted “telehealth services furnished under section 1395m(m)(4)(C)(ii)(VII) of this title,” after “section 1395x(s)(2) of this title.”

2003—Subsec. (e)(2)(A)(i)(II). Pub. L. 108-173, § 410(a)(1), substituted “clauses (ii), (iii), and (iv)” for “clauses (ii) and (iii)”.

Subsec. (e)(2)(A)(iv). Pub. L. 108-173, § 410(a)(2), added cl. (iv).

Subsec. (e)(12). Pub. L. 108-173, § 511(a), amended heading and text of par. (12) generally, substituting provisions relating to upward adjustment of per diem payment for residents of a skilled nursing facility with AIDS for provisions relating to per diem payment rule for certain qualified acute skilled nursing facilities.

2000—Subsec. (e)(4)(E)(ii)(II). Pub. L. 106-554, § 1(a)(6) [title III, § 311(a)(3)], added subcl. (II). Former subcl. (II) redesignated (III).

Subsec. (e)(4)(E)(ii)(III). Pub. L. 106-554, § 1(a)(6) [title III, § 311(a)(1), (2)], redesignated subcl. (II) as (III) and substituted “each of fiscal years 2002 and 2003” for “each of fiscal years 2001 and 2002” and “minus 0.5 percentage points” for “minus 1 percentage point”. Former subcl. (III) redesignated (IV).

Subsec. (e)(4)(E)(ii)(IV). Pub. L. 106-554, § 1(a)(6) [title III, § 311(a)(1)], redesignated subcl. (III) as (IV).

Subsec. (e)(7). Pub. L. 106-554, § 1(a)(6) [title II, § 203(a)(1)], substituted “Treatment of” for “Transition for” in heading.

Subsec. (e)(7)(A). Pub. L. 106-554, § 1(a)(6) [title II, § 203(a)(2), (3)], in heading substituted “Transition” for “In general” and in text substituted “Subject to subparagraph (C), the” for “The” and inserted “(other than critical access hospitals)” after “facilities described in subparagraph (B)”.

Subsec. (e)(7)(B). Pub. L. 106-554, § 1(a)(6) [title II, § 203(a)(4)], struck out “, for which payment is made for the furnishing of extended care services on a reasonable cost basis under section 1395f(l) of this title (as in effect on and after such date)” before period at end.

Subsec. (e)(7)(C). Pub. L. 106-554, § 1(a)(6) [title II, § 203(a)(5)], added subpar. (C).

1999—Subsec. (e)(1). Pub. L. 106-113, § 1000(a)(6) [title I, § 105(a)(1)], substituted “subject to paragraphs (7), (11), and (12)” for “subject to paragraphs (7) and (11)” in introductory provisions.

Pub. L. 106-113, § 1000(a)(6) [title I, § 102(a)(1)], substituted “paragraphs (7) and (11)” for “paragraph (7)” in introductory provisions.

Subsec. (e)(2)(A)(i)(II). Pub. L. 106-113, § 1000(a)(6) [title I, § 103(a)(1)], substituted “items and services described in clauses (ii) and (iii)” for “services described in clause (ii)”.

Subsec. (e)(2)(A)(iii). Pub. L. 106-113, § 1000(a)(6) [title I, § 103(a)(2)], added cl. (iii).

Subsec. (e)(3)(A)(i). Pub. L. 106-113, § 1000(a)(6) [title I, § 104(a)(1)(A)], inserted “or, in the case of a facility par-

ticipating in the Nursing Home Case-Mix and Quality Demonstration (RUGS-III), the RUGS-III rate received by the facility during the cost reporting period beginning in 1997” after “to non-settled cost reports”.

Subsec. (e)(3)(A)(ii). Pub. L. 106-113, §1000(a)(6) [title I, §104(a)(1)(B)], substituted “furnished during the applicable cost reporting period described in clause (i)” for “furnished during such period”.

Subsec. (e)(3)(B). Pub. L. 106-113, §1000(a)(6) [title I, §104(a)(2)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows:

“(i) IN GENERAL.—Subject to clause (ii), the Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase minus 1 percentage point.

“(ii) CERTAIN DEMONSTRATION PROJECTS.—In the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS-III), there shall be substituted for the amount described in clause (i) the RUGS-III rate received by the facility for 1997.”

Subsec. (e)(4)(E)(i). Pub. L. 106-113, §1000(a)(6) [title III, §321(k)(18)(A)], substituted “Federal” for “federal”.

Subsec. (e)(4)(E)(ii). Pub. L. 106-113, §1000(a)(6) [title III, §321(k)(18)(B)], substituted “Federal” for “federal” in two places in introductory provisions.

Subsec. (e)(4)(G)(iii). Pub. L. 106-113, §1000(a)(6) [title I, §103(b)(1)], added cl. (iii).

Subsec. (e)(8)(A). Pub. L. 106-113, §1000(a)(6) [title I, §103(b)(2)], substituted “adjustments for variations in labor-related costs under paragraph (4)(G)(ii), and adjustments under paragraph (4)(G)(iii)” for “and adjustments for variations in labor-related costs under paragraph (4)(G)(ii)”.

Subsec. (e)(8)(B). Pub. L. 106-113, §1000(a)(6) [title III, §321(g)(1)], substituted “July 1, 1999” for “January 1, 1999.”

Subsec. (e)(9). Pub. L. 106-113, §1000(a)(6) [title I, §103(a)(3)], inserted at end “In the case of an item or service described in clause (iii) of paragraph (2)(A) that would be payable under part A but for the exclusion of such item or service under such clause, payment shall be made for the item or service, in an amount otherwise determined under part B of this subchapter for such item or service, from the Federal Hospital Insurance Trust Fund under section 1395i of this title (rather than from the Federal Supplementary Medical Insurance Trust Fund under section 1395t of this title).”

Subsec. (e)(11). Pub. L. 106-113, §1000(a)(6) [title I, §102(a)(2)], added par. (11).

Subsec. (e)(12). Pub. L. 106-113, §1000(a)(6) [title I, §105(a)(2), (b)], temporarily added par. (12).

1997—Subsec. (a). Pub. L. 105-33, §4431, substituted “described in this subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.” for “described in this subsection” at end.

Subsec. (d)(1). Pub. L. 105-33, §4432(b)(5)(H), substituted “Subject to subsection (e), any skilled nursing facility” for “Any skilled nursing facility”.

Subsec. (e). Pub. L. 105-33, §4432(a), added subsec. (e).

Subsec. (e)(2)(A)(ii). Pub. L. 105-33, §4511(a)(2)(E), substituted “and (ii)” for “through (iii)”.

Subsec. (e)(9), (10). Pub. L. 105-33, §4432(b)(3), added pars. (9) and (10).

1993—Subsec. (a). Pub. L. 103-66, §13503(a)(2), inserted “, on or after October 1, 1995,” after “October 1, 1992” in concluding provisions.

Subsec. (b). Pub. L. 103-66, §13503(a)(3)(A), substituted “Secretary may not recognize” for “Secretary shall recognize” and a period for “(as determined by the Secretary) resulting from the reimbursement principles under this subchapter, notwithstanding the limits set forth in paragraph (3) or (4) of subsection (a) of this section.”

1990—Subsec. (a). Pub. L. 101-508, §4008(e)(2), struck out period at end and inserted “, and shall, for cost re-

porting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection”.

Subsec. (d)(1). Pub. L. 101-508, §4008(h)(2)(A)(ii), substituted “(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs” for “(and capital-related costs)”.

1987—Subsec. (d)(7). Pub. L. 100-203 added par. (7).

1986—Subsec. (b). Pub. L. 99-272, §9219(b)(1)(C), substituted “notwithstanding” for “nothwithstanding”.

Subsec. (c). Pub. L. 99-272, §9126(b), inserted provision requiring the Secretary to publish data and criteria to be used for purposes of this subsection on an annual basis.

Subsec. (d). Pub. L. 99-272, §9126(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 99-514, §1895(b)(7)(A), substituted “cost reporting period” for “fiscal year” in five places.

Subsec. (d)(4). Pub. L. 99-514, §1895(b)(7)(B), substituted “cost reporting periods beginning in a fiscal year” for “each fiscal year” and “cost reporting period no later than 30 days before the beginning of that period” for “fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-275 applicable to services furnished on or after Jan. 1, 2009, see section 149(c) of Pub. L. 110-275, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-173, title IV, §410(b), Dec. 8, 2003, 117 Stat. 2271, provided that: “The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 2005.”

Pub. L. 108-173, title V, §511(b), Dec. 8, 2003, 117 Stat. 2299, provided that: “The amendment made by paragraph (1) [probably should be “subsection (a)”, amending this section] shall apply to services furnished on or after October 1, 2004.”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1(a)(6) [title II, §203(a)] of Pub. L. 106-554 applicable to cost reporting periods beginning on or after Dec. 21, 2001, see section 1(a)(6) [title IV, §203(c)] of Pub. L. 106-554, set out as a note under section 1395tt of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(6) [title I, §102(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-325, provided that: “The amendments made by subsection (a) [amending this section] shall apply to elections made on or after December 15, 1999, except that no election shall be effective under such amendments for a cost reporting period beginning before January 1, 2000.”

Pub. L. 106-113, div. B, §1000(a)(6) [title I, §103(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-326, provided that: “The amendments made by subsection (a) [amending this section] shall apply to payments made for items and services furnished on or after April 1, 2000.”

Pub. L. 106-113, div. B, §1000(a)(6) [title I, §104(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-327, provided that: “The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 4432(a) of BBA [the Balanced Budget Act of 1997, Pub. L. 105-33].”

Pub. L. 106-113, div. B, §1000(a)(6) [title I, §105(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-328, provided that: “The amendments made by subsection (a) [amending this section] shall apply for the period beginning on the date on which the first cost reporting period of the facility begins after the date of the enactment of this Act [Nov. 29, 1999] and ending on September 30, 2001, and applies to skilled nursing facilities furnishing covered

skilled nursing facility services on the date of the enactment of this Act for which payment is made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]”

Amendment by section 1000(a)(6) [title III, §321(g)(1), (k)(18)] of Pub. L. 106-113 effective as if included in the enactment of the Balanced Budget Act of 1997, Pub. L. 105-33, except as otherwise provided, see section 1000(a)(6) [title III, §321(m)] of Pub. L. 106-113, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 4432(a), (b)(3), (5)(H) of Pub. L. 105-33 effective for cost reporting periods beginning on or after July 1, 1998, except that amendment by section 4432(b) applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105-33, set out as a note under section 1395i-3 of this title.

Amendment by section 4511(a)(2)(E) of Pub. L. 105-33 applicable with respect to services furnished and supplies provided on and after Jan. 1, 1998, see section 4511(e) of Pub. L. 105-33, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13503(a)(3)(B), Aug. 10, 1993, 107 Stat. 578, provided that: “The amendments made by subparagraph (A) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title IV, §4008(e)(3), Nov. 5, 1990, 104 Stat. 1388-45, provided that: “The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101-239].”

Amendment by section 4008(h)(2)(A)(i) of Pub. L. 101-508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, see section 4008(h)(2)(P) of Pub. L. 101-508, set out as a note under section 1395i-3 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i-3 of this title, see section 4204(a) of Pub. L. 100-203, as amended, set out as an Effective Date note under section 1395i-3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XVIII, §1895(b)(7)(D), Oct. 22, 1986, 100 Stat. 2933, provided that: “The amendments made by subparagraphs (A) and (B) [amending this section] apply to cost reporting periods beginning on or after October 1, 1986.”

Amendment by section 9219(b)(1)(C) of Pub. L. 99-272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98-369, see section 9219(b)(1)(D) of Pub. L. 99-272, set out as a note under section 1395u of this title.

Pub. L. 99-272, title IX, §9126(d), Apr. 7, 1986, 100 Stat. 170, as amended by Pub. L. 99-514, title XVIII, §1895(b)(7)(C), Oct. 22, 1986, 100 Stat. 2933, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986.

“(2) The amendment made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].”

EFFECTIVE DATE

Pub. L. 98-369, div. B, title III, §2319(c), July 18, 1984, 98 Stat. 1083, provided that: “The amendments made by subsections (a) [amending section 1395x of this title]

and (b) [enacting this section] shall apply to cost reporting periods beginning on or after July 1, 1984.”

STUDY ON PORTABLE DIAGNOSTIC ULTRASOUND SERVICES FOR BENEFICIARIES IN SKILLED NURSING FACILITIES

Pub. L. 108-173, title V, §513, Dec. 8, 2003, 117 Stat. 2300, directed the Comptroller General of the United States to conduct a study of portable diagnostic ultrasound services furnished to medicare beneficiaries in skilled nursing facilities and to submit to Congress a report on the study not later than 2 years after Dec. 8, 2003.

SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001

Pub. L. 106-554, §1(a)(6) [title III, §311(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-497, provided that: “Notwithstanding the amendments made by subsection (a) [amending this section], for purposes of making payments for covered skilled nursing facility services under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)) for fiscal year 2001, the Federal per diem rate referred to in paragraph (4)(E)(ii) of such section—

“(1) for the period beginning on October 1, 2000, and ending on March 31, 2001, shall be the rate determined in accordance with the law as in effect on the day before the date of the enactment of this Act [Dec. 21, 2000]; and

“(2) for the period beginning on April 1, 2001, and ending on September 30, 2001, shall be the rate that would have been determined under such section if ‘plus 1 percentage point’ had been substituted for ‘minus 1 percentage point’ under subclause (II) of such paragraph (as in effect on the day before the date of the enactment of this Act).”

Pub. L. 106-554, §1(a)(6) [title V, §547(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-553, provided that: “The payment increase provided under section 311(b)(2) [set out as a note above] (relating to covered skilled nursing facility services) shall not apply to services furnished after fiscal year 2001 and shall not be taken into account in calculating the payment amounts applicable for services furnished after such fiscal year.”

GAO REPORT ON ADEQUACY OF SNF PAYMENT RATES

Pub. L. 106-554, §1(a)(6) [title III, §311(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-498, provided that: “Not later than July 1, 2002, the Comptroller General of the United States shall submit to Congress a report on the adequacy of medicare payment rates to skilled nursing facilities and the extent to which medicare contributes to the financial viability of such facilities. Such report shall take into account the role of private payors, Medicaid, and case mix on the financial performance of these facilities, and shall include an analysis (by specific RUG classification) of the number and characteristics of such facilities.”

HCFA STUDY OF CLASSIFICATION SYSTEMS FOR SNF RESIDENTS

Pub. L. 106-554, §1(a)(6) [title III, §311(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-498, provided that:

“(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the different systems for categorizing patients in medicare skilled nursing facilities in a manner that accounts for the relative resource utilization of different patient types.

“(2) REPORT.—Not later than January 1, 2005, the Secretary shall submit to Congress a report on the study conducted under subsection (a). Such report shall include such recommendations regarding changes in law as may be appropriate.”

GAO AUDIT OF NURSING STAFF RATIOS

Pub. L. 106-554, §1(a)(6) [title III, §312(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-498, provided that:

“(1) AUDIT.—The Comptroller General of the United States shall conduct an audit of nursing staffing ratios

in a representative sample of medicare skilled nursing facilities. Such sample shall cover selected States and shall include broad representation with respect to size, ownership, location, and medicare volume. Such audit shall include an examination of payroll records and medicare cost reports of individual facilities.

“(2) REPORT.—Not later than August 1, 2002, the Comptroller General shall submit to Congress a report on the audits conducted under paragraph (1). Such report shall include an assessment of the impact of the increased payments under this subtitle [subtitle B, §§311–315, of title III of §1(a)(6) of Pub. L. 106–554, amending this section and sections 1395u, 1395y, and 1395cc of this title and enacting provisions set out as notes under this section and section 1395u of this title] on increased nursing staff ratios and shall make recommendations as to whether increased payments under subsection (a) [114 Stat. 2763A–498] should be continued.”

OVERSIGHT

Pub. L. 106–554, §1(a)(6) [title III, §313(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–499, provided that: “The Secretary of Health and Human Services, through the Office of the Inspector General in the Department of Health and Human Services or otherwise, shall monitor payments made under part B of the title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] for items and services furnished to residents of skilled nursing facilities during a time in which the residents are not being provided medicare covered post-hospital extended care services to ensure that there is not duplicate billing for services or excessive services provided.”

ESTABLISHMENT OF PROCESS FOR GEOGRAPHIC RECLASSIFICATION

Pub. L. 106–554, §1(a)(6) [title III, §315], Dec. 21, 2000, 114 Stat. 2763, 2763A–500, provided that:

“(a) IN GENERAL.—The Secretary of Health and Human Services may establish a procedure for the geographic reclassification of a skilled nursing facility for purposes of payment for covered skilled nursing facility services under the prospective payment system established under section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e)). Such procedure may be based upon the method for geographic reclassifications for inpatient hospitals established under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)).

“(b) REQUIREMENT FOR SKILLED NURSING FACILITY WAGE DATA.—In no case may the Secretary implement the procedure under subsection (a) before such time as the Secretary has collected data necessary to establish an area wage index for skilled nursing facilities based on wage data from such facilities.”

REPORT TO CONGRESS

Pub. L. 106–113, div. B, §1000(a)(6) [title I, §105(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–328, provided that: “Not later than March 1, 2001, the Secretary of Health and Human Services shall assess the resource use of patients of skilled nursing facilities furnishing services under the medicare program who are immunocompromised secondary to an infectious disease, with specific diagnoses as specified by the Secretary (under paragraph (12)(C), as added by subsection (a), of section 1888(e) of the Social Security Act (42 U.S.C. 1395yy(e))) to determine whether any permanent adjustments are needed to the RUGs to take into account the resource uses and costs of these patients.”

MEDICAL REVIEW PROCESS

Pub. L. 105–33, title IV, §4432(c), Aug. 5, 1997, 111 Stat. 422, provided that: “In order to ensure that medicare beneficiaries are furnished appropriate services in skilled nursing facilities, the Secretary of Health and Human Services shall establish and implement a thorough medical review process to examine the effects of the amendments made by this section [amending this section and sections 1395i–3, 1395k, 1395l, 1395u, 1395x,

1395y, 1395cc, and 1395tt of this title] on the quality of covered skilled nursing facility services furnished to medicare beneficiaries. In developing such a medical review process, the Secretary shall place a particular emphasis on the quality of non-routine covered services and physicians’ services for which payment is made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]”

CONSTRUCTION OF WAGE INDEX FOR SKILLED NURSING FACILITIES

Pub. L. 103–432, title I, §106(a), Oct. 31, 1994, 108 Stat. 4405, provided that: “Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act [42 U.S.C. 1395yy(a)(4)].”

NO CHANGE IN LIMITS ON PER DIEM SERVICE COSTS FOR EXTENDED CARE SERVICES FOR FISCAL YEARS 1994 AND 1995

Pub. L. 103–66, title XIII, §13503(a)(1), Aug. 10, 1993, 107 Stat. 578, provided that: “The Secretary of Health and Human Services may not provide for any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act [42 U.S.C. 1395yy] for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A) [amending this section]. The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.”

NO CHANGE IN PROSPECTIVE PAYMENTS FOR SERVICES FURNISHED DURING FISCAL YEARS 1994 AND 1995

Pub. L. 103–66, title XIII, §13503(b), Aug. 10, 1993, 107 Stat. 578, provided that: “The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act [42 U.S.C. 1395yy(d)] for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A) [amending section 1395x of this title].”

PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES

Pub. L. 101–508, title IV, §4008(k), Nov. 5, 1990, 104 Stat. 1388–52, provided that:

“(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A [42 U.S.C. 1395c et seq.] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

“(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

“(B) provide for adjustments to prospectively determined rates to account for changes in a facility’s case mix, volume of cases, and the development of new technologies and standards of medical practice;

“(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length

of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

“(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

“(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

“(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

“(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

“(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.”

USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES

Pub. L. 101-239, title VI, §6024, Dec. 19, 1989, 103 Stat. 2167, as amended by Pub. L. 101-508, title IV, §4008(e)(1), Nov. 5, 1990, 104 Stat. 1388-45, provided that: “The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act [42 U.S.C. 1395yy(a)] for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985. The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.”

§ 1395zz. Provider education and technical assistance

(a) Coordination of education funding

The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g), including under section 1395ddd of this title) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.

(b) Enhanced education and training

(1) Additional resources

There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) such sums as may be necessary for fiscal years beginning with fiscal year 2005.

(2) Use

The funds made available under paragraph (1) shall be used to increase the conduct by

medicare contractors of education and training of providers of services and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses.

(c) Tailoring education and training activities for small providers or suppliers

(1) In general

Insofar as a medicare contractor conducts education and training activities, it shall tailor such activities to meet the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

(2) Small provider of services or supplier

In this subsection, the term “small provider of services or supplier” means—

(A) a provider of services with fewer than 25 full-time-equivalent employees; or

(B) a supplier with fewer than 10 full-time-equivalent employees.

(d) Internet websites; FAQs

The Secretary, and each medicare contractor insofar as it provides services (including claims processing) for providers of services or suppliers, shall maintain an Internet website which—

(1) provides answers in an easily accessible format to frequently asked questions, and

(2) includes other published materials of the contractor,

that relate to providers of services and suppliers under the programs under this subchapter (and subchapter XI insofar as it relates to such programs).

(e) Encouragement of participation in education program activities

A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of services or suppliers for the purpose of conducting any type of audit or prepayment review.

(f) Construction

Nothing in this section or section 1395ddd(g) of this title shall be construed as providing for disclosure by a medicare contractor—

(1) of the screens used for identifying claims that will be subject to medical review; or

(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

(g) Definitions

For purposes of this section, the term “medicare contractor” includes the following:

(1) A medicare administrative contractor with a contract under section 1395kk-1 of this title, including a fiscal intermediary with a