

services available to any beneficiary. Therefore, once an individual receives benefits for 190 days of care in a psychiatric hospital, no further benefits of that type are available to that individual.

§ 409.63 Reduction of inpatient psychiatric benefit days available in the initial benefit period.

(a) *Reduction rule.* (1) If the individual was an inpatient in a psychiatric hospital on the first day of Medicare entitlement and for any of the 150 days immediately before that first day of entitlement, those days are subtracted from the 150 days (90 regular days plus 60 lifetime reserve days) which would otherwise be available in the initial benefit period for inpatient psychiatric services in a psychiatric or general hospital.

(2) Reduction is required only if the hospital was participating in Medicare as a psychiatric hospital on the individual's first day of entitlement.

(3) The reduction applies only to the beneficiary's first benefit period. For subsequent benefit periods, the 90 benefit days, plus any remaining lifetime reserve days, subject to the 190 day lifetime limit on psychiatric hospital care, are available.

(b) *Application to general hospital days.*

(1) Days spent in a general hospital before entitlement are not subtracted under paragraph (a) of this section even if the stay was for diagnosis or treatment of mental illness.

(2) After entitlement, all psychiatric care days, whether in a general or a psychiatric hospital, are counted toward the number of days available in the initial benefit period.

(c) *Examples:* (1) The individual was an inpatient of a participating psychiatric hospital for 20 days before the first day of entitlement and remained there for another 6 months. Therefore, 130 days of benefits (150 minus 20) are payable. Payment could be made for: 60 full benefit days, 30 coinsurance days, and 40 lifetime reserve days.

(2) During the 150-day period preceding Medicare entitlement, an individual had been a patient of a general hospital for 60 days of inpatient psychiatric care and had spent 90 days in a psychiatric hospital, ending with the

first day of entitlement. During the initial benefit period, the beneficiary spent 90 days in a general hospital and received psychiatric care there. The 60 days spent in the general hospital for psychiatric treatment before entitlement do not reduce the benefits available in the first benefit period. Only the 90 days spent in the psychiatric hospital before entitlement reduce such benefits, leaving a total of 60 available psychiatric days. However, after entitlement, the reduction applies not only to days spent in a psychiatric hospital, but also to days of psychiatric treatment in a general hospital. Thus, Medicare payment could be made only for 60 of the 90 days spent in the general hospital.

(3) An individual was admitted to a general hospital for a mental condition and, after 10 days, transferred to a participating psychiatric hospital. The individual remained in the psychiatric hospital for 78 days before becoming entitled to hospital insurance benefits and for 130 days after entitlement. The beneficiary was then transferred to a general hospital and received treatment of a medical condition for 20 days. The 10 days spent in the general hospital during the 150-day pre-entitlement period have no effect on the inpatient hospital benefit days available to the individual for psychiatric care in the first benefit period, even though the general hospital stay was for a mental condition. Only the 78 days spent in the psychiatric hospital during the pre-entitlement period are subtracted from the 150 benefit days. Accordingly, the individual has 72 days of psychiatric care (150 days less 78 days) available in the first benefit period. Benefits could be paid for the individual's hospitalization during the first benefit period in the following manner. For the 130-day psychiatric hospital stay, 72 days (60 full benefit days and 12 coinsurance days), and for the general hospital stay, 20 days (18 coinsurance and 2 lifetime reserve days).

§ 409.64 Services that are counted toward allowable amounts.

(a) Except as provided in paragraph (b) of this section for lifetime reserve days, all covered inpatient days and home health visits are counted toward

the allowable amounts specified in §§ 409.61 through 409.63 if—

(1) They are paid for by Medicare; or
 (2) They would be paid for by Medicare if the following requirements had been met:

(i) A proper and timely request for payment had been filed; and

(ii) The hospital, CAH, SNF, or home health agency had submitted all necessary evidence, including physician certification of need for services when such certification was required; or

(3) They could not be paid for because the total payment due was equal to, or less than, the applicable deductible and coinsurance amounts.

(b) *Exception.* Even though the requirements of paragraph (a)(2) of this section are met, lifetime reserve days are not counted toward the allowable amounts if the beneficiary elected or is deemed to have elected not to use them as set forth in § 409.65.

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§ 409.65 Lifetime reserve days.

(a) *Election not to use lifetime reserve days.* (1) Whenever a beneficiary has exhausted the 90 regular benefit days, the hospital or CAH may bill Medicare for lifetime reserve days unless the beneficiary elects not to use them or, in accordance with paragraph (b) of this section, is deemed to have elected not to use them.

(2) It may be advantageous to elect not to use lifetime reserve days if the beneficiary has private insurance coverage that begins after the first 90 inpatient days in a benefit period, or if the daily charge is only slightly higher than the lifetime reserve days coinsurance amount. In such cases, the beneficiary may want to save the lifetime reserve days for future care that may be more expensive.

(3) If the beneficiary elects not to use lifetime reserve days for a particular hospital or CAH stay, they are still available for a later stay. However, once the beneficiary uses lifetime reserve days, they can never be renewed.

(4) If the beneficiary elects not to use lifetime reserve days, the hospital or CAH may require him or her to pay for any services furnished after the regular days are exhausted.

(b) *Deemed election.* A beneficiary will be deemed to have elected not to use lifetime reserve days if the average daily charges for such days is equal to or less than the applicable coinsurance amount specified in § 409.83. A beneficiary would get no benefit from using the days under those circumstances.

(c) *Who may file an election.* An election not to use reserve days may be filed by—

(1) The beneficiary; or

(2) If the beneficiary is physically or mentally unable to act, by the beneficiary's legal representative. In addition, if some other payment source is available, such as private insurance, any person authorized under § 405.1664 of this chapter to execute a request for payment for the beneficiary may file the election.

(d) *Filing the election.* (1) The beneficiary's election not to use lifetime reserve days must be filed in writing with the hospital or CAH.

(2) The election may be filed at the time of admission to the hospital or CAH or at any time thereafter up to 90 days after the beneficiary's discharge.

(3) A retroactive election (that is, one made after lifetime reserve days have been used because the regular days were exhausted), is not acceptable unless it is approved by the hospital or CAH.

(e) *Period covered by election—*(1) *General rule.* Except as provided in paragraph (e)(2) of this section, an election not to use lifetime reserve days may apply to an entire hospital or CAH stay or to a single period of consecutive days in a stay, but cannot apply to selected days in a stay. For example, a beneficiary may restrict the election to the period covered by private insurance but cannot use individual lifetime reserve days within that period. If an election not to use reserve days is effective after the first day on which reserve days are available, it must remain in effect until the end of the stay, unless it is revoked in accordance with § 409.66.

(2) *Exception.* A beneficiary election not to use lifetime reserve days for an inpatient hospital or inpatient CAH stay for which payment may be made under the prospective payment system