

**Subpart H—Payment for End-Stage Renal Disease (ESRD) Services and Organ Procurement Costs**

SOURCE: 62 FR 43668, Aug. 15, 1997, unless otherwise noted.

**§ 413.170 Scope.**

This subpart implements sections 1881 (b)(2) and (b)(7) of the Act by—

(a) Setting forth the principles and authorities under which HCFA is authorized to establish a prospective payment system for outpatient maintenance dialysis furnished in or under the supervision of an ESRD facility approved under subpart U of part 405 of this chapter (referred to as “facility” in this section). For purposes of this section and § 413.172 through § 413.198, “outpatient maintenance dialysis” means outpatient dialysis, home dialysis, self-dialysis, and home dialysis training, as defined in § 405.2102 (f)(2)(ii), (f)(2)(iii), and (f)(3) of this chapter, and includes all items and services specified in §§ 410.50 and 410.52 of this chapter.

(b) Providing procedures and criteria under which a facility may receive an exception to the prospective payment rates; and

(c) Establishing procedures that a facility must follow to appeal its payment amount under the prospective payment system.

**§ 413.172 Principles of prospective payment.**

(a) Payments for outpatient maintenance dialysis are based on rates set prospectively by HCFA.

(b) All approved ESRD facilities must accept the prospective payment rates established by HCFA as payment in full for covered outpatient maintenance dialysis.

(c) HCFA publishes the methodology used to establish payment rates and the changes specified in § 413.196(b) in the FEDERAL REGISTER.

**§ 413.174 Prospective rates for hospital-based and independent ESRD facilities.**

(a) *Establishment of rates.* HCFA establishes prospective payment rates for

ESRD facilities using a methodology that—

(1) Differentiates between hospital-based facilities and independent ESRD facilities;

(2) Effectively encourages efficient delivery of dialysis services; and

(3) Provides incentives for increasing the use of home dialysis.

(b) *Determination of independent facility.* For purposes of rate-setting and payment under this section, HCFA considers any facility that does not meet all of the criteria of a hospital-based facility to be an independent facility. A determination under this paragraph (b) is an initial determination under § 498.3 of this chapter.

(c) *Determination of hospital-based facility.* A determination under this paragraph (c) is an initial determination under § 498.3 of this chapter. For purposes of rate-setting and payment under this section, HCFA determines that a facility is hospital-based if the—

(1) Facility and hospital are subject to the bylaws and operating decisions of a common governing board. This governing board, which has final administrative responsibility, approves all personnel actions, appoints medical staff, and carries out similar management functions;

(2) Facility’s director or administrator is under the supervision of the hospital’s chief executive officer and reports through him or her to the governing board;

(3) Facility personnel policies and practices conform to those of the hospital;

(4) Administrative functions of the facility (for example, records, billing, laundry, housekeeping, and purchasing) are integrated with those of the hospital; and

(5) Facility and hospital are financially integrated, as evidenced by the cost report, which reflects allocation of overhead to the facility through the required step-down methodology.

(d) *Nondetermination of hospital-based facility.* In determining whether a facility is hospital-based, HCFA does not consider—

(1) An agreement between a facility and a hospital concerning patient referral;