

§ 447.272 Application of upper payment limits.

(a) *General rule.* Except as provided in paragraph (c) of this section, aggregate payments by an agency to each group of health care facilities (that is, hospitals, nursing facilities and ICFs for the mentally retarded (ICFs/MR)), may not exceed the amount that can reasonably be estimated would have been paid for those services under Medicare payment principles.

(b) *State operated facilities.* In addition to meeting the requirement of paragraph (a) of this section, aggregate payments to each group of State-operated facilities (that is, hospitals, nursing facilities and ICFs/MR) may not exceed the amount that can reasonably be estimated would have been paid under Medicare payment principles.

(c) *Disproportionate share.* The upper payment limitation established under paragraphs (a) and (b) of this section does not apply to payment adjustments made under a State plan to hospitals found to serve a disproportionate number of low-income patients with special needs as provided in § 447.253(b)(1)(ii)(A). The payment limitations for aggregate State disproportionate share hospital payments are specified in §§ 447.296 through 447.299. States must submit a separate upper payment limit assurance that its aggregate disproportionate share hospital payments do not exceed the disproportionate share hospital payment limits.

[52 FR 28147, July 28, 1987, as amended at 56 FR 48867, Sept. 26, 1991; 57 FR 43924, Sept. 23, 1992; 57 FR 55143, Nov. 24, 1992]

SWING-BED HOSPITALS

§ 447.280 Hospital providers of NF services (swing-bed hospitals).

(a) *General rule.* If the State plan provides for NF services furnished by a swing-bed hospital, as specified in §§ 440.40(a) and 440.150(f) of this chapter, the methods and standards used to determine payment rates for routine NF services must—

(1) Provide for payment at the average rate per patient day paid to NFs, as applicable, for routine services furnished during the previous calendar year; or

(2) Meet the State plan and payment requirements described in this subpart, as applicable.

(b) *Application of the rule.* The payment methodology used by a State to set payment rates for routine NF services must apply to all swing-bed hospitals in the State.

[59 FR 56237, Nov. 10, 1994]

Subpart D [Reserved]**Subpart E—Payment Adjustments for Hospitals That Serve a Disproportionate Number of Low-Income Patients**

SOURCE: 57 FR 55143, Nov. 24, 1992, unless otherwise noted.

§ 447.296 Limitations on aggregate payments for disproportionate share hospitals for the period January 1, 1992 through September 30, 1992.

(a) The provisions of this section apply to the 50 States and the District of Columbia, but not to any State whose entire Medicaid program is operated under a waiver granted under section 1115 of the Act.

(b) For the period January 1, 1992 through September 30, 1992, FFP is available for aggregate payments to hospitals that serve a disproportionate number of low-income patients with special needs only if the payments are made in accordance with sections 1902(a)(13)(A) and 1923 of the Act, and with one of the following:

(1) An approved State plan in effect as of September 30, 1991.

(2) A State plan amendment submitted to HCFA by September 30, 1991.

(3) A State plan amendment, or modification thereof, submitted to HCFA between October 1, 1991 and November 26, 1991, if the amendment, or modification thereof, was intended to limit the State's definition of disproportionate share hospitals to those hospitals with Medicaid inpatient utilization rates or low-income utilization rates (as defined in section 1923 (b) of the Act) at or above the statewide arithmetic mean.

(4) A methodology for disproportionate share hospital payments that

was established and in effect as of September 30, 1991, or in accordance with a State law enacted or State regulation adopted as of September 30, 1991.

(5) A State plan amendment submitted to HCFA by September 30, 1992 that increases aggregate disproportionate share hospitals payments in order to meet the minimum payment adjustments required by section 1923(c)(1) of the Act. The minimum payment adjustment is the amount required by the Medicare methodology described in section 1923(c)(1) of the Act for those hospitals that satisfy the minimum Federal definition of a disproportionate share hospital in section 1923(b) of the Act.

(6) A State plan amendment submitted to HCFA by September 30, 1992 that provides for a redistribution of disproportionate share hospital payments within the State without raising total payments compared to the previously approved State plan. HCFA will approve the amendment only if the State submits written documentation that demonstrates to HCFA that the aggregate payments that will be made after the redistribution are no greater than those payments made before the redistribution.

(7) A State plan amendment submitted to HCFA by September 30, 1992 that provides for a reduction in disproportionate share hospital payments.

§ 447.297 Limitations on aggregate payments for disproportionate share hospitals beginning October 1, 1992.

(a) *Applicability.* The provisions of this section apply to the 50 States and the District of Columbia, but not to any State whose entire Medicaid program is operated under a waiver granted under section 1115 of the Act.

(b) *National payment target.* The national payment target for disproportionate share hospital (DSH) payments for any Federal fiscal year is equal to 12 percent of the total medical assistance expenditures that will be made during the Federal fiscal year under State plans, excluding administrative costs. A preliminary national expenditure target will be published by HCFA prior to October 1 of each year. This preliminary national expenditure tar-

get will be superseded by a final national expenditure target published by April 1 of each Federal fiscal year, as specified in paragraph (d) of this section.

(c) *State disproportionate share hospital allotments.* Prior to October 1 of each Federal fiscal year, HCFA will publish in the FEDERAL REGISTER preliminary State DSH allotments for each State. These preliminary State DSH allotments will be determined using the most current applicable actual and estimated State expenditure information as reported to HCFA and adjusted by HCFA as may be necessary using the methodology described in § 447.298. HCFA will publish final State DSH allotments by April 1 of each Federal fiscal year, as described in paragraph (d) of this section.

(d) *Final national disproportionate share hospitals expenditure target and State disproportionate share hospitals allotments.*

(1) HCFA will revise the preliminary national expenditure target and the preliminary State DSH allotments by April 1 of each Federal fiscal year. The final national DSH expenditure target and State DSH allotments will be based on the most current applicable actual and estimated expenditure information reported to HCFA and adjusted by HCFA as may be necessary immediately prior to the April 1 publication date. The final national expenditure target and State DSH allotments will not be recalculated for that Federal fiscal year based upon any subsequent actual or estimated expenditure information reported to HCFA.

(2) If HCFA determines that at any time a State has exceeded its final DSH allotment for a Federal fiscal year, FFP attributable to the excess DSH expenditures will be disallowed.

(3) If a State's actual DSH expenditures applicable to a Federal fiscal year are less than its final State DSH allotment for that Federal fiscal year, the State is permitted, to the extent allowed by its approved State plan, to make additional DSH expenditures applicable to that Federal fiscal year up to the amount of its final DSH allotment for that Federal fiscal year.

(e) *Publication of limits.*