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(1) First, we will compute the total dollar amount already paid or payable with respect to a ticket, including all outcome and milestone payments.

(2) Then, we will subtract the total dollar amount already paid from the total value of the ticket under the new rules for the year when these rules take effect. The total value of the ticket will be calculated based on the elected payment system for the beneficiary, *i.e.*, the outcome or the outcome-milestone payment system, and on the appropriate payment calculation base for either a title II disability beneficiary (including a concurrent title II and title XVI disability) or a title XVI disability beneficiary (see §§411.500 and 411.505). For accounting purposes, we will use the payment calculation base for 2008 and assume that all payments could be earned in that year in calculating the total value of the ticket.

(3) We then will divide this amount by the applicable outcome payment amount (whether title II or title XVI) payable for 2008 and round the result in accordance with customary rounding principles. The resulting number represents the number of outcome payments available to be paid with respect to the ticket. In no case can this number exceed 60.

[73 FR 29349, May 20, 2008]

§411.552 What effect will the subsequent entitlement to title II benefits have on EN payments for title XVI beneficiaries after they assign their ticket?

If a beneficiary is only eligible for title XVI benefits when we authorize the first milestone or outcome for which an EN can be paid, but the beneficiary later becomes entitled to title II benefits, we will continue to make payments as though the beneficiary were only a title XVI beneficiary, up to the maximum number of milestone and outcome payments payable for that ticket for title XVI beneficiaries. If a beneficiary who is eligible for title XVI disability benefits becomes entitled to title II disability benefits before we authorize the first milestone or outcome payment, we will make payments to the EN pursuant to the rate, payment calculation base and number of pay-

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ments available for title II beneficiaries, as described in this subpart.

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§411.555 Can the EN keep the milestone and outcome payments even if the beneficiary does not achieve all outcome months?

(a) Yes. The EN (or State VR agency acting as an EN) can keep each milestone and outcome payment for which the EN (or State VR agency acting as an EN) is eligible, even though the title II beneficiary does not achieve all 36 outcome months or the title XVI beneficiary does not achieve all 60 outcome months.

(b) Except as provided in paragraph (c) of this section, payments which we make or deny to an EN (or a State VR agency acting as an EN) may be subject to adjustment (including recovery, as appropriate) if we determine that more or less than the correct amount was paid. This may happen, for example, because we determine that the payment determination was in error or because of an allocation of payment under §411.560.

(c) If we determine that an overpayment or underpayment to an EN has occurred, we will notify the EN (or State VR agency acting as an EN) of the adjustment. We will not seek an adjustment if a determination or decision about a beneficiary's right to benefits causes an overpayment to the EN. Any dispute which the EN (or State VR agency) has regarding the adjustment may be resolved under the rules in §411.590(a) and (b).

[73 FR 29349, May 20, 2008]

§411.560 Is it possible to pay a milestone or outcome payment to more than one EN?

It is possible for more than one EN (including a State VR agency acting as an EN) to receive payment based on the same milestone or outcome. If the beneficiary has assigned the ticket to more than one EN (or State VR agency acting as an EN) at different times, and more than one EN (or State VR agency) requests payment for the same milestone, outcome or reconciliation payment under its elected payment system, the PM will make a determination of the allocation of payment to

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each EN (or State VR agency acting as an EN). The PM will make this determination based upon the contribution of the services provided by each EN (or State VR agency acting as an EN) toward the achievement of the outcomes or milestones. Outcome and milestone payments will not be increased because the payments are shared between two or more ENs (including a State VR agency acting as an EN).

[73 FR 29350, May 20, 2008]

§411.565 What happens if two or more ENs qualify for payment on the same ticket but have elected different EN payment systems?

We will pay each EN (or State VR agency acting as an EN) according to its elected EN payment system in effect at the time the beneficiary assigned the ticket to the EN (or the State VR agency acting as an EN).

[73 FR 29350, May 20, 2008]

§411.566 May an EN use outcome or milestone payments to make payments to the beneficiary?

Yes, an EN may use milestone or outcome payments to make payments to a beneficiary.

[73 FR 29350, May 20, 2008]

§411.570 Can an EN request payment from the beneficiary who assigned a ticket to the EN?

No. Section 1148(b)(4) of the Act prohibits an EN from requesting or receiving compensation from the beneficiary for the services of the EN.

§411.575 How does the EN request payment for milestones or outcome payment months achieved by a beneficiary who assigned a ticket to the EN?

The EN (or State VR agency acting as an EN) will send its request for payment, evidence of the beneficiary's work or earnings, and other information to the PM. In addition, we or the PM may require a summary of the services provided as described in the IWP/IPE.

(a) *Milestone payments.* (1) We will pay the EN (or State VR agency acting as an EN) for milestones only if—

(i) The outcome-milestone payment system was the EN's (or State VR

agency's) elected payment system in effect at the time the beneficiary assigned a ticket to the EN (or the State VR agency acting as an EN);

(ii) The milestones occur prior to the outcome payment period (see §411.500(b));

(iii) The requirements in §411.535 are met; and

(iv) The ticket has not terminated for any of the reasons listed in §411.155.

(2) The EN (or State VR agency acting as an EN) must request payment for each milestone attained by a beneficiary who has assigned a ticket to the EN (or State VR agency acting as an EN). The request must include evidence that the milestone was attained after ticket assignment and other information as we may require to evaluate the EN's (or State VR agency's) request. If the EN is requesting payment for months after the ticket is no longer assigned to it, the payment request shall include evidence that the services agreed to in the IWP/IPE were provided and those services contributed to the employment milestones or outcomes that the beneficiary attained in months after the ticket had been assigned to the EN. We do not have to stop monthly benefit payments to the beneficiary before we can pay the EN (or State VR agency acting as an EN) for milestones attained by the beneficiary.

(b) *Outcome payments.* (1) We will pay an EN (or State VR agency acting as an EN) an outcome payment for a month if—

(i)(A) Social Security disability benefits and Federal SSI cash benefits are not payable to the individual for that month due to work or earnings; or

(B) The requirements of §411.525(a)(1)(ii) are met in a case where the beneficiary's entitlement to Social Security disability benefits has ended or eligibility for SSI benefits based on disability or blindness has terminated because of work activity or earnings; and

(ii) We have not already paid for 36 outcome payment months for a title II disability beneficiary (or a concurrent title II/title XVI disability beneficiary), or paid for 60 outcome payment months for a title XVI disability beneficiary who is not concurrently a