

§ 412.84, Medicare will not pay any additional amount beyond the DRG payment plus—

(i) 65 percent of the estimated costs of the new medical service or technology;

(ii) For a medical product designated by FDA as a Qualified Infectious Disease Product, 75 percent of the estimated costs of the new medical service or technology; or

(iii) For discharges occurring on or after October 1, 2020, for a product approved under FDA's Limited Population Pathway for Antibacterial and Antifungal Drugs, 75 percent of the estimated costs of the new medical service or technology.

[66 FR 46924, Sept. 7, 2001, as amended at 67 FR 50111, Aug. 1, 2002; 69 FR 49244, Aug. 11, 2004; 72 FR 47411, Aug. 22, 2007; 84 FR 42612, Aug. 16, 2019; 85 FR 59021, Sept. 18, 2020]

#### PAYMENT ADJUSTMENT FOR CERTAIN REPLACED DEVICES

#### § 412.89 Payment adjustment for certain replaced devices.

(a) *General rule.* For discharges occurring on or after October 1, 2007, the amount of payment for a discharge described in paragraph (b) of this section is reduced when—

(1) A device is replaced without cost to the hospital;

(2) The provider received full credit for the cost of a device; or

(3) The provider receives a credit equal to 50 percent or more of the cost of the device.

(b) *Discharges subject to payment adjustment.* (1) Payment is reduced in accordance with paragraph (a) of this section only if the implantation of the device determines the DRG assignment.

(2) CMS lists the DRGs that qualify under paragraph (b)(1) of this section in the annual final rule for the hospital inpatient prospective payment system.

(c) *Amount of reduction.* (1) For a device provided to the hospital without cost, the cost of the device is subtracted from the DRG payment.

[72 FR 47411, Aug. 22, 2007]

#### Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

#### § 412.90 General rules.

(a) *Sole community hospitals.* CMS may adjust the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals, is the sole source of inpatient hospital services reasonably available in a geographic area to Medicare beneficiaries. If a hospital meets the criteria for such an exception under § 412.92(a), its prospective payment rates for inpatient operating costs are determined under § 412.92(d).

(b) *Referral center.* CMS may adjust the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital acts as a referral center for patients transferred from other hospitals. Criteria for identifying such referral centers are set forth in § 412.96.

(c) [Reserved]

(d) *Kidney acquisition costs incurred by hospitals with approved kidney transplant programs.* CMS pays for kidney acquisition costs incurred by kidney transplant programs on a reasonable cost basis. The criteria for this special payment provision are set forth in § 412.100.

(e) *Hospitals located in areas that are reclassified from urban to rural.* (1) CMS adjusts the rural Federal payment amounts for inpatient operating costs for hospitals located in geographic areas that are reclassified from urban to rural as defined in subpart D of this part. This adjustment is set forth in § 412.102.

(2) CMS establishes a procedure by which certain individual hospitals located in urban areas may apply for reclassification as rural. The criteria for reclassification are set forth in § 412.103.

(f) *Hospitals that have a high percentage of ESRD beneficiary discharges.* CMS makes an additional payment to a hospital if ten percent or more of its total Medicare discharges in a cost reporting period beginning on or after October 1,

## § 412.92

## 42 CFR Ch. IV (10–1–23 Edition)

1984 are ESRD beneficiary discharges. In determining ESRD discharges, discharges in DRG Nos. 302, 316, and 317 are excluded. The criteria for this additional payment are set forth in § 412.104.

(g) *Hospitals that incur indirect costs for graduate medical education programs.* CMS makes an additional payment for inpatient operating costs to a hospital for indirect medical education costs attributable to an approved graduate medical education program. The criteria for this additional payment are set forth in § 412.105.

(h) *Hospitals that serve a disproportionate share of low-income patients.* For discharges occurring on or after May 1, 1986, CMS makes an additional payment for inpatient operating costs to hospitals that serve a disproportionate share of low-income patients. The criteria for this additional payment are set forth in § 412.106.

(i) *Hospitals that receive an additional update for FYs 1998 and 1999.* For FYs 1998 and 1999, CMS makes an upward adjustment to the standardized amounts for certain hospitals that do not receive indirect medical education or disproportionate share payments and are not Medicare-dependent, small rural hospitals. The criteria for identifying these hospitals are set forth in § 412.107.

(j) *Medicare-dependent, small rural hospitals.* For cost reporting periods beginning on or after April 1, 1990, and before October 1, 1994, and for discharges occurring on or after October 1, 1997 and before October 1, 2024, CMS adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part if a hospital is classified as a Medicare-dependent, small rural hospital.

(k) *Essential access community hospitals (EACHs).* If a hospital was designated as an EACH by CMS as described in § 412.109(a) and is located in a rural area as defined in § 412.109(b), CMS determines the prospective payment rate for that hospital, as it does

for sole community hospitals, under § 412.92(d).

[57 FR 39823, Sept. 1, 1992, as amended at 58 FR 30669, May 26, 1993; 62 FR 46028, Aug. 29, 1997; 64 FR 67051, Nov. 30, 1999; 65 FR 47047, Aug. 1, 2000; 70 FR 47485, Aug. 12, 2005; 71 FR 48138, Aug. 18, 2006; 82 FR 38511, Aug. 14, 2017; 83 FR 41701, Aug. 17, 2018; 86 FR 73511, Dec. 27, 2021; 88 FR 59331, Aug. 28, 2023]

### § 412.92 Special treatment: Sole community hospitals.

(a) *Criteria for classification as a sole community hospital.* CMS classifies a hospital as a sole community hospital if it is located more than 35 miles from other like hospitals, or it is located in a rural area (as defined in § 412.64) and meets one of the following conditions:

(1) The hospital is located between 25 and 35 miles from other like hospitals and meets one of the following criteria:

(i) No more than 25 percent of residents who become hospital inpatients or no more than 25 percent of the Medicare beneficiaries who become hospital inpatients in the hospital's service area are admitted to other like hospitals located within a 35-mile radius of the hospital, or, if larger, within its service area;

(ii) The hospital has fewer than 50 beds and the MAC certifies that the hospital would have met the criteria in paragraph (a)(1)(i) of this section were it not for the fact that some beneficiaries or residents were forced to seek care outside the service area due to the unavailability of necessary specialty services at the community hospital; or

(iii) Because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least 30 days in each 2 out of 3 years.

(2) The hospital is located between 15 and 25 miles from other like hospitals but because of local topography or periods of prolonged severe weather conditions, the other like hospitals are inaccessible for at least 30 days in each 2 out of 3 years.

(3) Because of distance, posted speed limits, and predictable weather conditions, the travel time between the hospital and the nearest like hospital is at least 45 minutes.

(4) For a hospital with a main campus and one or more remote locations under a single provider agreement where services are provided and billed under the inpatient hospital prospective payment system and that meets the provider-based criteria at § 413.65 of this chapter as a main campus and a remote location of a hospital, combined data from the main campus and its remote location(s) are required to demonstrate that the criteria specified in paragraphs (a)(1)(i) and (ii) of this section are met. For the mileage and rural location criteria in paragraph (a) of this section and the mileage, accessibility, and travel time criteria specified in paragraphs (a)(1) through (3) of this section, the hospital must demonstrate that the main campus and its remote location(s) each independently satisfy those requirements.

(b) *Classification procedures*—(1) *Request for classification as sole community hospital.* (i) The hospital must make its request to its MAC.

(ii) If a hospital is seeking sole community hospital classification under paragraph (a)(1)(i) or (a)(1)(ii) of this section, the hospital must include the following information with its request:

(A) The hospital must provide patient origin data (for example, the number of patients from each zip code from which the hospital draws inpatients) for all inpatient discharges to document the boundaries of its service area.

(B) The hospital must provide patient origin data from all other hospitals located within a 35 mile radius of it or, if larger, within its service area, to document that no more than 25 percent of either all of the population or the Medicare beneficiaries residing in the hospital's service area and hospitalized for inpatient care were admitted to other like hospitals for care.

(iii)(A) If the hospital is unable to obtain the information required under paragraph (b)(1)(ii)(A) of this section concerning the residences of Medicare beneficiaries who were inpatients in other hospitals located within a 35 mile radius of the hospital or, if larger, within the hospital's service area, the hospital may request that CMS provide this information.

(B) If a hospital obtains the information as requested under paragraph (b)(1)(iii)(A) of this section, that information is used by both the MAC and CMS in making the determination of the residences of Medicare beneficiaries under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, regardless of any other information concerning the residences of Medicare beneficiaries submitted by the hospital.

(iv) The MAC reviews the request and send the request, with its recommendation, to CMS.

(v) CMS reviews the request and the MAC's recommendation and forwards its approval or disapproval to the MAC.

(2) *Effective dates of classification.*(i) For applications received on or before September 30, 2018, sole community hospital status is effective 30 days after the date of CMS' written notification of approval, except as provided in paragraph (b)(2)(v) of this section. For applications received on or after October 1, 2018, sole community hospital status is effective as of the date the MAC receives the complete application, except as provided in paragraphs (b)(2)(v) and (vi) of this section.

(ii) When a court order or a determination by the Provider Reimbursement Review Board (PRRB) reverses a CMS denial of sole community hospital status and no further appeal is made, the sole community hospital status is effective as follows:

(A) If the hospital's application was submitted prior to October 1, 1983, its status as a sole community hospital is effective at the start of the cost reporting period for which it sought exemption from the cost limits.

(B) If the hospital's application for sole community hospital status was received on or after October 1, 1983 and on or before September 30, 2018, the effective date is 30 days after the date of CMS' original written notification of denial.

(C) If the hospital's application for sole community hospital status was received on or after October 1, 2018, the effective date is as provided in paragraph (b)(2)(i) of this section.

(iii) When a hospital is granted retroactive approval of sole community hospital status by a court order or a PRRB decision and the hospital wishes its

sole community hospital status terminated before the date of the court order or PRRB determination, it must submit written notice to the CMS regional office within 90 days of the court order or PRRB decision. A written request received after the 90-day period is effective no later than 30 days after the request is submitted.

(iv) For applications received on or before September 30, 2018, a hospital classified as a sole community hospital receives a payment adjustment, as described in paragraph (d) of this section, effective with discharges occurring on or after 30 days after the date of CMS' approval of the classification. For applications received on or after October 1, 2018, a hospital classified as a sole community hospital receives a payment adjustment, as described in paragraph (d) of this section, effective with discharges occurring on or after the effective date as provided in paragraph (b)(2)(i) of this section.

(v) If a hospital that is classified as an MDH under § 412.108 applies for classification as a sole community hospital because its status under the MDH program expires with the expiration of the MDH program, and that hospital's sole community hospital status is approved, the effective date of approval of sole community hospital status is the day following the expiration date of the MDH program if the hospital—

(A) Applies for classification as a sole community hospital prior to 30 days before the expiration of the MDH program; and

(B) Requests that sole community hospital status be effective with the expiration of the MDH program.

(vi) For applications received on or after October 1, 2023, where eligibility for sole community hospital classification is dependent on the hospital's merger with another hospital, sole community hospital status is effective as of the effective date of the approved merger if, and only if, the date that the Medicare administrative contractor (MAC) receives the complete application is within 90 days of CMS' written notification to the hospital of the approval of the merger.

(3) *Duration of classification.* (i) An approved classification as a sole community hospital remains in effect without

need for reapproval unless there is a change in the circumstances under which the classification was approved. An approved sole community hospital must notify the MAC if any change that is specified in paragraph (b)(3)(ii) of this section occurs. If CMS determines that a sole community hospital failed to comply with this requirement, CMS will cancel the hospital's classification as a sole community hospital effective with the date that the hospital no longer met the criteria for such classification, consistent with the provisions of § 405.1885 of this chapter.

(ii) A sole community hospital must report the following to the MAC within 30 days of the event:

(A) The opening of a new hospital in its service area.

(B) The opening of a new road between itself and a like provider within 35 miles.

(C) An increase in the number of beds to more than 50 if the hospital qualifies as a sole community hospital under paragraph (a)(1)(ii) of this section.

(D) Its geographic classification changes.

(E) Any changes to the driving conditions that result in a decrease in the amount of travel time between itself and a like provider if the hospital qualifies as a sole community hospital under paragraph (a)(3) of this section.

(iii) A sole community hospital must report to the MAC if it becomes aware of any change that would affect its classification as a sole community hospital beyond the events listed in paragraph (b)(3)(ii) of this section within 30 days of the event. If CMS determines that a sole community hospital has failed to comply with this requirement, CMS will cancel the hospital's classification as a sole community hospital effective with the date the hospital became aware of the event that resulted in the sole community hospital no longer meeting the criteria for such classification, consistent with the provisions of § 405.1885 of this chapter.

(iv) A sole community hospital must report to the MAC any factor or information that could have affected its initial classification as a sole community hospital.

(A) If CMS determines that a sole community hospital has failed to comply with the requirement of paragraph ((b)(3)(iv) of this section, CMS may cancel the hospital's classification as a sole community hospital effective with the date the hospital failed to meet the criteria for such classification, consistent with the provisions of §405.1885 of this chapter.

(B) Effective on or after October 1, 2012, if a hospital reports to CMS any factor or information that could have affected its initial determination and CMS determines that the hospital should not have qualified for sole community hospital status, CMS will cancel the sole community hospital status effective 30 days from the date of the determination.

(4) *Cancellation of classification.* (i) A hospital may at any time request cancellation of its classification as a sole community hospital, and be paid at rates determined under subparts D and E of this part, as appropriate.

(ii) The cancellation becomes effective no later than 30 days after the date the hospital submits its request.

(iii) If a hospital requests that its sole community hospital classification be cancelled, it may not be reclassified as a sole community hospital unless it meets the following conditions:

(A) At least one full year has passed since the effective date of its cancellation.

(B) The hospital meets the qualifying criteria set forth in paragraph (a) of this section in effect at the time it re-applies.

(5) *Automatic classification as a sole community hospital.* A hospital that has been granted an exemption from the hospital cost limits before October 1, 1983, or whose request for the exemption was received by the appropriate intermediary before October 1, 1983, and was subsequently approved, is automatically classified as a sole community hospital unless that classification has been cancelled under paragraph (b)(3) of this section, or there is a change in the circumstances under which the classification was approved.

(c) *Terminology.* As used in this section—

(1) The term *miles* means the shortest distance in miles measured over im-

proved roads. An improved road for this purpose is any road that is maintained by a local, State, or Federal government entity and is available for use by the general public. An improved road includes the paved surface up to the front entrance of the hospital.

(2) The term *like hospital* means a hospital furnishing short-term, acute care. Effective with cost reporting periods beginning on or after October 1, 2002, for purposes of a hospital seeking sole community hospital designation, CMS will not consider the nearby hospital to be a like hospital if the total inpatient days attributable to units of the nearby hospital that provides a level of care characteristic of the level of care payable under the acute care hospital inpatient prospective payment system are less than or equal to 8 percent of the similarly calculated total inpatient days of the hospital seeking sole community hospital designation.

(3) The term *service area* means the area from which a hospital draws at least 75 percent of its inpatients during the most recent 12-month cost reporting period ending before it applies for classification as a sole community hospital. If the most recent cost reporting period ending before the hospital applies for classification as a sole community hospital is for less than 12 months, the hospital's most recent 12-month or longer cost reporting period before the short period is used.

(d) *Determining prospective payment rates for inpatient operating costs for sole community hospitals—*(1) *General rule.* For cost reporting periods beginning on or after April 1, 1990, a sole community hospital is paid based on whichever of the following amounts yields the greatest aggregate payment for the cost reporting period:

(i) The Federal payment rate applicable to the hospitals as determined under subpart D of this part.

(ii) The hospital-specific rate as determined under §412.73.

(iii) The hospital-specific rate as determined under §412.75.

(iv) For cost reporting periods beginning on or after October 1, 2000, the hospital-specific rate as determined under §412.77 (calculated under the transition schedule set forth in paragraph (d)(2) of this section).

(v) For cost reporting periods beginning on or after January 1, 2009, the hospital-specific rate as determined under § 412.78.

(2) *Transition of FY 1996 hospital-specific rate.* The MAC calculates the hospital-specific rate determined on the basis of the fiscal year 1996 base period rate as follows:

(i) For Federal fiscal year 2001, the hospital-specific rate is the sum of 75 percent of the greater of the amounts specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section, plus 25 percent of the hospital-specific rate as determined under § 412.77.

(ii) For Federal fiscal year 2002, the hospital-specific rate is the sum of 50 percent of the greater of the amounts specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section, plus 50 percent of the hospital-specific rate as determined under § 412.77.

(iii) For Federal fiscal year 2003, the hospital-specific rate is the sum of 25 percent of the greater of the amounts specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this section, plus 75 percent of the hospital-specific rate as determined under § 412.77.

(iv) For Federal fiscal year 2004 and any subsequent fiscal years, the hospital-specific rate is 100 percent of the hospital-specific rate specified in paragraph (d)(1)(iv) of this section.

(3) *Adjustment to payments.* A sole community hospital may receive an adjustment to its payments to take into account a significant decrease in the number of discharges, as described in paragraph (e) of this section.

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease.* (1) For cost reporting periods beginning on or after October 1, 1983, the MAC provides for a payment adjustment for a sole community hospital for any cost reporting period during which the hospital experiences, due to circumstances as described in paragraph (e)(2) of this section a more than five percent decrease in its total discharges of inpatients as compared to its immediately preceding cost reporting period. If either the cost reporting period in question or the immediately preceding cost reporting period is other than a 12-month cost reporting period, the MAC must convert the discharges

to a monthly figure and multiply this figure by 12 to estimate the total number of discharges for a 12-month cost reporting period.

(2) To qualify for a payment adjustment on the basis of a decrease in discharges, a sole community hospital must submit its request no later than 180 days after the date on the MAC's Notice of Amount of Program Reimbursement—

(i) Submit to the MAC documentation demonstrating the size of the decrease in discharges, and the resulting effect on per discharge costs; and

(ii) Show that the decrease is due to circumstances beyond the hospital's control.

(3) Effective for cost reporting periods beginning before October 1, 2017, the MAC determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs (including outlier payments for inpatient operating costs determined under subpart F of this part and additional payments made for inpatient operating costs for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.105). Effective for cost reporting periods beginning on or after October 1, 2017, the MAC determines a lump sum adjustment amount equal to the difference between the hospital's fixed Medicare inpatient operating costs and the hospital's total MS-DRG revenue based on MS-DRG-adjusted prospective payment rates for inpatient operating costs (including outlier payments for inpatient operating costs determined under subpart F of this part and additional payments made for inpatient operating costs for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.105) multiplied by the ratio of the hospital's fixed inpatient operating costs to its total inpatient operating costs.

(i) In determining the adjustment amount, the MAC considers—

(A) The individual hospital's needs and circumstances, including the reasonable cost of maintaining necessary core staff and services in view of minimum staffing requirements imposed by State agencies;

(B) The hospital's fixed (and semi-fixed) costs, other than those costs paid on a reasonable cost basis under part 413 of this chapter; and

(C) The length of time the hospital has experienced a decrease in utilization.

(ii) The MAC makes its determination within 180 days from the date it receives the hospital's request and all other necessary information.

(iii) The MAC determination is subject to review under subpart R of part 405 of this chapter.

[50 FR 12741, Mar. 29, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 412.92, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

#### § 412.96 Special treatment: Referral centers.

(a) *Criteria for classification as a referral center: Basic rule.* CMS classifies a hospital as a referral center only if the hospital is a Medicare participating acute care hospital and meets the applicable criteria of paragraph (b) or (c) of this section.

(b) *Criteria for cost reporting periods beginning on or after October 1, 1983.* The hospital meets either of the following criteria:

(1) The hospital is located in a rural area (as defined in subpart D of this part) and has the following number of beds, as determined under the provisions of § 412.105(b) available for use:

(i) Effective for discharges occurring before April 1, 1988, the hospital has 500 or more beds.

(ii) Effective for discharges occurring on or after April 1, 1988, the hospital has 275 or more beds during its most recently completed cost reporting period unless the hospital submits written documentation with its application that its bed count has changed since the close of its most recently com-

pleted cost reporting period for one or more of the following reasons:

(A) Merger of two or more hospitals.

(B) Reopening of acute care beds previously closed for renovation.

(C) Transfer to the prospective payment system of acute care beds previously classified as part of an excluded unit.

(D) Expansion of acute care beds available for use and permanently maintained for lodging inpatients, excluding beds in corridors and other temporary beds.

(2) The hospital shows that—(i) At least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital; and

(ii) At least 60 percent of the hospital's Medicare patients live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries are furnished to beneficiaries who live more than 25 miles from the hospital.

(c) *Alternative criteria.* For cost reporting periods beginning on or after October 1, 1985, a hospital that does not meet the criteria of paragraph (b) of this section is classified as a referral center if it is located in a rural area (as defined in subpart D of this part) and meets the criteria specified in paragraphs (c)(1) and (c)(2) of this section and at least one of the three criteria specified in paragraphs (c)(3), (c)(4), and (c)(5) of this section.

(1) *Case-mix index.* CMS sets forth national and regional case-mix index values in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology CMS uses to calculate these criteria is described in paragraph (h) of this section. The case-mix index value to be used for an individual hospital in the determination of whether it meets the case-mix index criteria is that calculated by CMS from the hospital's own billing records for Medicare discharges as processed by the fiscal intermediary and submitted to CMS. The hospital's case-mix index for discharges (not including discharges from units excluded from the prospective payment system under subpart B of this part) during the

same Federal fiscal year used to compute the case mix index values under paragraph (h) of this section must be at least equal to—

(i) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the national or regional case-mix index value; or

(ii) For hospitals applying for rural referral center status for cost-reporting periods beginning on or after October 1, 1986, the national case-mix index value as established by CMS or the median case-mix index value for urban hospitals located in each region. In calculating the median case-mix index for each region, CMS excludes the case-mix indexes of hospitals receiving indirect medical education payments as provided in § 412.105.

(2) *Number of discharges.* (i) CMS sets forth the national and regional number of discharges in each year's annual notice of prospective payment rates published under § 412.8(b). The methodology CMS uses to calculate these criteria is described in paragraph (i) of this section. Except as provided in paragraph (c)(2)(ii) of this section for an osteopathic hospital, for the hospital's cost reporting period that began during the same fiscal year as the cost reporting periods used to compute the regional median discharges under paragraph (i) of this section, its number of discharges (not including discharges from units excluded from the prospective payments system under subpart B of this part or from newborn units) is at least equal to—

(A) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1985 and before October 1, 1986, the number of discharges under either the national or regional criterion; or

(B) For hospitals applying for rural referral center status for cost reporting periods beginning on or after October 1, 1986, 5,000 discharges or, if less, the median number of discharges for urban hospitals located in each region.

(ii) For cost reporting periods beginning on or after January 1, 1986, an osteopathic hospital, recognized by the American Osteopathic Healthcare Association (or any successor organiza-

tion), that is located in a rural area must have at least 3,000 discharges during its cost reporting period that began during the same fiscal year as the cost reporting periods used to compute the regional median discharges under paragraph (i) of this section to meet the number of discharges criterion.

(iii) If the hospital's cost reporting period that began during the same fiscal year as the cost reporting periods used to compute the regional median discharges under paragraph (i) of this section is for less than 12 months or longer than 12 months, the hospital's number of discharges for that cost reporting period will be annualized to estimate the total number of discharges for a 12-month cost reporting period.

(3) *Medical staff.* More than 50 percent of the hospital's active medical staff are specialists who meet one of the following conditions:

(i) Are certified as specialists by one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists.

(ii) Have completed the current training requirements for admission to the certification examination of one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists.

(iii) Have successfully completed a residency program in a medical specialty accredited by the Accreditation Council of Graduate Medical Education or the American Osteopathic Association.

(4) *Source of inpatients.* At least 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

(5) *Volume of referrals.* At least 40 percent of all inpatients treated at the hospital are referred from other hospitals or from physicians not on the hospital's staff.

(d) *Criteria for hospitals that have remote location(s).* For a hospital with a main campus and one or more remote locations under a single provider agreement where services are provided and billed under the inpatient hospital prospective payment system and that meets the provider-based criteria at



§ 413.65 of this chapter as a main campus and a remote location of a hospital, combined data from the main campus and its remote location(s) are required to demonstrate that the criteria specified in paragraphs (b)(1) and (2) and (c)(1) through (5) of this section are met. For the rural location criteria specified in paragraphs (b)(1) and (c) of this section and the mileage criteria specified in paragraphs (b)(2)(ii) and (c)(4) of this section, the hospital must demonstrate that the main campus and its remote locations each independently satisfy those requirements.

(e) *Payment to rural referral centers.* Effective for discharges occurring on or after April 1, 1988, and before October 1, 1994, a hospital that is located in a rural area and meets the criteria of paragraphs (b)(1), (b)(2) or (c) of this section is paid prospective payments for inpatient operating costs per discharge based on the applicable other urban payment rates as determined in accordance with § 412.63, as adjusted by the hospital's area wage index.

(f) [Reserved]

(g) *Hospital cancellation of referral center status.* (1) A hospital may at any time request cancellation of its status as a referral center and be paid prospective payments per discharge based on the applicable rural rate, as determined in accordance with subpart D of this part.

(2) The cancellation becomes effective no later than 30 days after the date the hospital submits its request.

(3) If a hospital requests that its referral center status be canceled, it may not be reclassified as a referral center unless it meets the qualifying criteria set forth in paragraph (a) of this section in effect at the time it reapplies.

(4) A hospital that submits a written request on or after October 1, 2007, to cancel its reclassification under § 412.103(g) is deemed to have cancelled its status as a rural referral center effective on the same date the cancellation under § 412.103(g) takes effect. The provision of this paragraph (g)(4) applies to hospitals that qualify as rural referral centers under § 412.96 based on rural status acquired under § 412.103.

(h) *Methodology for calculating case-mix index criteria.* CMS calculates the national and regional case-mix index

value criteria as described in paragraphs (h)(1) through (h)(4) of this section.

(1) *Updating process.* CMS updates the national and regional case-mix index standards using the best available data from hospitals subject to the prospective payment system for the Federal fiscal year.

(2) *Source of data.* In making the calculations described in paragraph (h)(1) of this section, CMS uses all inpatient hospital bills received for discharges subject to prospective payment during the Federal fiscal year being monitored.

(3) *Effective date.* CMS sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are used to determine if a hospital qualifies for referral center status for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

(i) *Methodology for calculating number of discharges criteria.* For purposes of determining compliance with the national or regional number of discharges criterion under paragraph (c)(2) of this section, CMS calculates the criteria as follows:

(1) *Updating process.* CMS updates the national and regional number of discharges using the best available data for levels of admissions or discharges or both.

(2) *Source of data.* In making the calculations described in paragraph (i)(1) of this section, CMS uses the best available hospital admissions or discharge data.

(3) *Annual notice.* CMS sets forth the national and regional criteria in the annual notice of prospective payment rates published under § 412.8(b). These criteria are compared to an applying hospital's number of discharges for the same cost reporting period used to develop the regional criteria in this section in determining if the hospital qualifies for referral center status for cost reporting periods beginning on or after October 1 of the Federal fiscal year to which the notice applies.

[50 FR 12741, Mar. 29, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 412.96, see the List of CFR Sections Affected, which appears in the

## § 412.98

Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 412.98 [Reserved]

#### § 412.100 Special treatment: Kidney transplant programs.

(a) *Adjustments for kidney transplant programs.* (1) CMS adjusts the inpatient prospective payment system (IPPS) rates for inpatient operating costs determined under subparts D and E of this part for hospitals with approved kidney transplant programs (discussed at § 482.104 of this chapter) to remove the net costs associated with kidney acquisition.

(2)(i) Payment for Medicare kidney acquisition costs, as set forth in subpart L of part 413 of this chapter, is made on a reasonable cost basis apart from the prospective payment rate for inpatient operating costs.

(ii) IPPS payment to the hospital is adjusted in each cost reporting period to reflect an amount necessary to compensate the hospital for reasonable costs of Medicare kidney acquisition.

(b) Costs of kidney acquisition. Kidney acquisition costs include allowable costs incurred in the acquisition of a kidney from a living or a deceased donor by the hospital, or from a deceased donor by an organ procurement organization. These costs are listed in § 413.402(b) of this chapter.

[ 86 FR 73511, Dec. 27, 2021, as amended at 87 FR 72286, Nov. 23, 2022]

#### § 412.101 Special treatment: Inpatient hospital payment adjustment for low-volume hospitals.

(a) *Definitions.* Beginning in FY 2011, the terms used in this section are defined as follows:

*Medicare discharges* means discharge of inpatients entitled to Medicare Part A, including discharges associated with individuals whose inpatient benefits are exhausted or whose stay was not covered by Medicare and also discharges of individuals enrolled in a MA organization under Medicare Part C.

*Road miles* means “miles” as defined in § 412.92(c)(1).

(b) *General considerations.* (1) CMS provides an additional payment to a qualifying hospital for the higher incremental costs associated with a low

## 42 CFR Ch. IV (10–1–23 Edition)

volume of discharges. The amount of any additional payment for a qualifying hospital is calculated in accordance with paragraph (c) of this section.

(2) In order to qualify for this adjustment, a hospital must meet the following criteria, subject to the provisions of paragraph (e) of this section:

(i) For FY 2005 through FY 2010 and FY 2025 and subsequent fiscal years, a hospital must have fewer than 200 total discharges, which includes Medicare and non-Medicare discharges, during the fiscal year, based on the hospital's most recently submitted cost report, and be located more than 25 road miles (as defined in paragraph (a) of this section) from the nearest “subsection (d)” (section 1886(d) of the Act) hospital.

(ii) For FY 2011 through FY 2018, a hospital must have fewer than 1,600 Medicare discharges, as defined in paragraph (a) of this section, during the fiscal year, based on the hospital's Medicare discharges from the most recently available MedPAR data as determined by CMS, and be located more than 15 road miles, as defined in paragraph (a) of this section, from the nearest “subsection (d)” (section 1886(d) of the Act) hospital.

(iii) For FY 2019 through FY 2024, a hospital must have fewer than 3,800 total discharges, which includes Medicare and non-Medicare discharges, during the fiscal year, based on the hospital's most recently submitted cost report, and be located more than 15 road miles (as defined in paragraph (a) of this section) from the nearest “subsection (d)” (section 1886(d) of the Act) hospital.

(3) In order to qualify for the adjustment, a hospital must provide its fiscal intermediary or Medicare administrative contractor with sufficient evidence that it meets the distance requirement specified under paragraph (b)(2) of this section. The fiscal intermediary or Medicare administrative contractor will base its determination of whether the distance requirement is satisfied upon the evidence presented by the hospital and other relevant evidence, such as maps, mapping software, and inquiries to State and local police, transportation officials, or other government officials.

(c) *Determination of the adjustment amount.* The low-volume adjustment for hospitals that qualify under paragraph (b) of this section is as follows for the applicable fiscal year:

(1) For FY 2005 through FY 2010 and FY 2025 and subsequent fiscal years, the adjustment is an additional 25 percent for each Medicare discharge.

(2) For FY 2011 through FY 2018, the adjustment is as follows:

(i) For low-volume hospitals with 200 or fewer Medicare discharges (as defined in paragraph (a) of this section), the adjustment is an additional 25 percent for each Medicare discharge.

(ii) For low-volume hospitals with Medicare discharges (as defined in paragraph (a) of this section) of more than 200 and fewer than 1,600, the adjustment for each Medicare discharge is an additional percent calculated using the formula  $[(4/14) - (\text{number of Medicare discharges}/5600)]$ . The “number of Medicare discharges” is determined as described in paragraph (b)(2)(ii) of this section.

(3) For FY 2019 through FY 2024, the adjustment is as follows:

(i) For low-volume hospitals with 500 or fewer total discharges, which includes Medicare and non-Medicare discharges, during the fiscal year, based on the hospital’s most recently submitted cost report, the adjustment is an additional 25 percent for each Medicare discharge.

(ii) For low-volume hospitals with more than 500 and fewer than 3,800 total discharges, which includes Medicare and non-Medicare discharges, during the fiscal year, based on the hospital’s most recently submitted cost report, the adjustment for each Medicare discharge is an additional percent calculated using the formula  $[(95/330) - (\text{number of total discharges}/13,200)]$ . “Total discharges” is determined as described in paragraph (b)(2)(iii) of this section.

(d) *Eligibility of new hospitals for the adjustment.* For FYs 2005 through 2010 and FY 2019 and subsequent fiscal years, a new hospital will be eligible for a low-volume adjustment under this section once it has submitted a cost report for a cost reporting period that indicates that it meets discharge requirements during the applicable fiscal year

and has provided its Medicare administrative contractor with sufficient evidence that it meets the distance requirement, as specified in paragraph (b)(2) of this section.

(e) *Special treatment regarding hospitals operated by the Indian Health Service (IHS) or a Tribe.* (1) For discharges occurring in FY 2018 and subsequent fiscal years—

(i) A hospital operated by the IHS or a Tribe will be considered to meet the applicable mileage criterion specified under paragraph (b)(2) of this section if it is located more than the specified number of road miles from the nearest subsection (d) hospital operated by the IHS or a Tribe.

(ii) A hospital, other than a hospital operated by the IHS or a Tribe, will be considered to meet the applicable mileage criterion specified under paragraph (b)(2) of this section if it is located more than the specified number of road miles from the nearest subsection (d) hospital other than a subsection (d) hospital operated by the IHS or a Tribe.

(2) Subject to the requirements set forth in §405.1885 of this chapter, a hospital may request the application of the policy described in paragraph (e)(1) of this section for discharges occurring in FY 2011 through FY 2017.

[75 FR 50414, Aug. 16, 2010, as amended at 78 FR 50965, Aug. 19, 2013; 49 FR 15030, Mar. 18, 2014; 79 FR 50352, Aug. 22, 2014; 80 FR 49767, Aug. 17, 2015; 82 FR 38511, Aug. 14, 2017; 83 FR 41702, Aug. 17, 2018; 84 FR 42613, Aug. 16, 2019; 88 FR 59332, Aug. 28, 2023]

**§412.102 Special treatment: Hospitals located in areas that are changing from urban to rural as a result of a geographic redesignation.**

An urban hospital that was part of an MSA, but was redesignated as rural as a result of the most recent OMB standards for delineating statistical areas adopted by CMS, may receive an adjustment to its rural Federal payment amount for operating costs for 2 successive fiscal years as provided in paragraphs (a) and (b) of this section.

(a) *First year adjustment.* (1) Effective on or after October 1, 1983 and before October 1, 2014, the hospital’s rural average standardized amount and disproportionate share payments as described in §412.106 are adjusted on the

## § 412.103

basis of an additional amount that equals two-thirds of the difference between the urban standardized amount and disproportionate share payments applicable to the hospital before its geographic redesignation and the rural standardized amount and disproportionate share payments otherwise applicable to the Federal fiscal year for which the adjustment is made.

(2) Effective on or after October 1, 2014, the hospital's rural disproportionate share payments as described in § 412.106 are adjusted on the basis of an additional amount that equals two-thirds of the difference between the disproportionate share payments as an urban hospital applicable to the hospital before its geographic redesignation to a rural area as a result of implementation of the most recent OMB standards for delineating statistical areas adopted by CMS and the rural disproportionate share payment otherwise applicable to the Federal fiscal year for which the adjustment is made.

(b) *Second year adjustment.* (1) Effective on or after October 1, 1983 and before October 1, 2014, if a hospital's status continues to be rural as a result of geographic redesignation, its rural average standardized amount and disproportionate share payments are adjusted on the basis of an additional amount that equals one-third of the difference between the urban standardized amount and disproportionate share payments applicable to the hospital before its redesignation and the rural standardized amounts and disproportionate share payments otherwise applicable to the Federal fiscal year for which the adjustment is made.

(2) Effective on or after October 1, 2014, if a hospital's status continues to be rural as a result of geographic redesignation, its disproportionate share payments are adjusted on the basis of an additional amount that equals one-third of the difference between the disproportionate share payments applicable to the hospital before its geographic redesignation to a rural area as a result of implementation of the most recent OMB standards for delineating statistical areas adopted by CMS and the rural disproportionate share payments otherwise applicable to the Fed-

## 42 CFR Ch. IV (10–1–23 Edition)

eral fiscal year for which the adjustment is made.

[79 FR 50353, Aug. 22, 2014]

### **§ 412.103 Special treatment: Hospitals located in urban areas and that apply for reclassification as rural.**

(a) *General criteria.* A prospective payment hospital that is located in an urban area (as defined in subpart D of this part) may be reclassified as a rural hospital if it submits an application in accordance with paragraph (b) of this section and meets any of the following conditions:

(1) The hospital is located in a rural census tract of a Metropolitan Statistical Area (MSA) as determined under the most recent version of the Goldsmith Modification, the Rural-Urban Commuting Area codes, as determined by the Office of Rural Health Policy (ORHP) of the Health Resources and Services Administration, which is available via the ORHP Web site at: <http://www.ruralhealth.hrsa.gov> or from the U.S. Department of Health and Human Services, Health Resources and Services Administration, Office of Rural Health Policy, 5600 Fishers Lane, Room 9A-55, Rockville, MD 20857.

(2) The hospital is located in an area designated by any law or regulation of the State in which it is located as a rural area, or the hospital is designated as a rural hospital by State law or regulation.

(3) The hospital would qualify as a rural referral center as set forth in § 412.96, or as a sole community hospital as set forth in § 412.92, if the hospital were located in a rural area.

(4) For any period after September 30, 2004 and before October 1, 2006, a CAH in a county that, in FY 2004, was not part of a MSA as defined by the Office of Management and Budget, but as of FY 2005 was included as part of an MSA as a result of the most recent census data and implementation of the new MSA definitions announced by OMB on June 6, 2003, may be reclassified as being located in a rural area for purposes of meeting the rural location requirement in § 485.610(b) of this chapter if it meets any of the requirements in paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(5) For any period after September 30, 2009, and before October 1, 2011, a CAH in a county that, in FY 2009, was not part of an MSA as defined by the Office of Management and Budget, but, as of FY 2010, was included as part of an MSA as a result of the most recent census data and implementation of the new MSA definitions announced by OMB on November 20, 2008, may be reclassified as being located in a rural area for purposes of meeting the rural location requirement in §485.610(b) of this chapter if it meets any of the requirements under paragraph (a)(1), (a)(2), or (a)(3) of this section.

(6) For any period on or after October 1, 2014, a CAH in a county that was not in an urban area as defined by the Office of Management and Budget (OMB), but was included in an urban area as a result of the most recent OMB standards for delineating statistical areas adopted by CMS and the most recent Census Bureau data, may be reclassified as being located in a rural area for purposes of meeting the rural location requirement at §485.610(b) of this chapter for a period of 2 years, beginning with the date of the implementation of the new labor market area delineations, if it meets any of the requirements under paragraph (a)(1), (a)(2), or (a)(3) of this section.

(7) For a hospital with a main campus and one or more remote locations under a single provider agreement where services are provided and billed under the inpatient hospital prospective payment system and that meets the provider-based criteria at §413.65 of this chapter as a main campus and a remote location of a hospital, the hospital is required to demonstrate that the main campus and its remote location(s) each independently satisfy the location conditions specified in paragraphs (a)(1) and (2) of this section.

(8) For a hospital with a main campus and one or more remote locations under a single provider agreement where services are provided and billed under the inpatient hospital prospective payment system and that meets the provider-based criteria at §413.65 of this chapter as a main campus and a remote location of a hospital, approved rural reclassification status applies to the main campus and any remote loca-

tion located in an urban area (as defined in §412.64(b) and including a main campus or any remote location deemed urban under section 1886(d)(8)(B) of the Act).

(b) *Application requirements*—(1) *Written application*. A hospital seeking reclassification under this section must submit a complete application in writing to CMS in accordance with paragraphs (b)(2) and (b)(3) of this section.

(2) *Contents of application*. An application is complete if it contains an explanation of how the hospital meets the condition that constitutes the basis of the request for reclassification set forth in paragraph (a) of this section, including data and documentation necessary to support the request.

(3) *Submission of application*. An application may be submitted to the CMS Regional Office by the requesting hospital by mail or by facsimile or other electronic means.

(4) *Notification by CMS*. Within 5 business days after receiving the hospital's application, the CMS Regional Office will send the hospital a letter acknowledging receipt, with a copy to the CMS Central Office.

(5) *Filing date*. The filing date of the application is the date CMS receives the application.

(6) *Lock-in date for the wage index calculation and budget neutrality*. In order for a hospital to be treated as rural in the wage index and budget neutrality calculations under §412.64(e)(1)(ii), (e)(2) and (4), and (h) for the payment rates for the next Federal fiscal year, the hospital's application must be approved by the CMS Regional Office in accordance with the requirements of this section no later than 60 days after the public display date at the Office of the Federal Register of the inpatient prospective payment system proposed rule for the next Federal fiscal year.

(c) *CMS review*. The CMS Regional Office will review the application and notify the hospital of its approval or disapproval of the request within 60 days of the filing date.

(d) *Effective dates of reclassification*. (1) Except as specified in paragraphs (d)(2) and (3) of this section, CMS will consider a hospital that satisfies any of the criteria set forth in paragraph (a) of this section as being located in the

rural area of the State in which the hospital is located as of that filing date.

(2) If a hospital's complete application is received in CMS by September 1, 2000, and satisfies any of the criteria set forth in paragraph (a) of this section, CMS will consider the filing date to be January 1, 2000.

(3) CMS will consider a hospital that satisfies the criteria set forth in paragraph (a)(3) of this section and which qualifies for sole community hospital status in accordance with the requirements of § 412.92(b)(2)(vi) as being located in the rural area of the State in which the hospital is located as of the effective date set forth in § 412.92(b)(2)(vi).

(e) *Withdrawal of application.* A hospital may withdraw an application at any time prior to the date of CMS's decision as set forth in paragraph (c) of this section.

(f) *Duration of classification.* An approved reclassification under this section remains in effect without need for reapproval unless there is a change in the circumstances under which the classification was approved.

(g) *Cancellation of classification—(1) Hospitals other than rural referral centers.* Except as provided in paragraph (g)(2) of this section—

(i) A hospital may cancel its rural reclassification by submitting a written request to the CMS Regional Office not less than 120 days prior to the end of its current cost reporting period.

(ii) The hospital's cancellation of the classification is effective beginning with the next full cost reporting period.

(iii) The provisions of paragraphs (g)(1)(i) and (ii) of this section are effective for all written requests submitted by hospitals before October 1, 2019 to cancel rural reclassifications.

(2) *Hospitals classified as rural referral centers.* For a hospital that was classified as a rural referral center under § 412.96 based on rural reclassification under this section—

(i) A hospital may cancel its rural reclassification by submitting a written request to the CMS Regional Office not less than 120 days prior to the end of a Federal fiscal year and after being paid

as rural for at least one 12-month cost reporting period.

(ii) The hospital's cancellation of the classification is not effective until it has been paid as rural for at least one 12-month cost reporting period, and not until the beginning of the Federal fiscal year following such 12-month cost reporting period.

(iii) The provisions of paragraphs (g)(2)(i) and (ii) of this section are effective for all written requests submitted by hospitals on or after October 1, 2007 and before October 1, 2019, to cancel rural reclassifications.

(3) *Cancellation of rural reclassification on or after October 1, 2019, and before October 1, 2021.* For all written requests submitted by hospitals on or after October 1, 2019, and before October 1, 2021, to cancel rural reclassifications, a hospital may cancel its rural reclassification by submitting a written request to the CMS Regional Office not less than 120 days prior to the end of a Federal fiscal year. The hospital's cancellation of the classification is effective beginning with the next Federal fiscal year.

(4) *Cancellation of rural reclassification on or after October 1, 2021.* For all written requests submitted by hospitals on or after October 1, 2021, to cancel rural reclassifications, a hospital may cancel its rural reclassification by submitting a written request to the CMS Regional Office not less than 1 calendar year after the effective date of the rural reclassification and not less than 120 days prior to the end of a Federal fiscal year. The hospital's cancellation of the classification is effective beginning with the next Federal fiscal year.

(5) *Special rule for hospitals that opt to receive county out-migration adjustment.* A rural reclassification will be considered canceled effective for the next Federal fiscal year when a hospital, by submitting a request to CMS within 45 days of the date of public display of the proposed rule for the next Federal fiscal year at the Office of the Federal Register, opts to accept and receives its county out-migration wage index adjustment determined under section

1886(d)(13) of the Act in lieu of its geographic reclassification described under section 1886(d)(8)(B) of the Act.

[65 FR 47048, Aug. 1, 2000, as amended at 69 FR 49244, Aug. 11, 2004; 69 FR 60252, Oct. 7, 2004; 70 FR 47486, Aug. 12, 2005; 72 FR 47411, Aug. 22, 2007; 74 FR 43997, Aug. 27, 2009; 79 FR 50353, Aug. 22, 2014; 81 FR 57267, Aug. 22, 2016; 83 FR 41703, Aug. 17, 2018; 84 FR 42613, Aug. 16, 2019; 86 FR 45519, Aug. 13, 2021; 87 FR 49403, Aug. 10, 2022; 88 FR 59332, Aug. 28, 2023]

**§ 412.104 Special treatment: Hospitals with high percentage of ESRD discharges.**

(a) *Criteria for classification.* CMS provides an additional payment to a hospital for inpatient services provided to ESRD beneficiaries who receive a dialysis treatment during a hospital stay, if the hospital has established that ESRD beneficiary discharges, excluding discharges classified into any of the following MS-DRGs, where the beneficiary received dialysis services during the inpatient stay, constitute 10 percent or more of its total Medicare discharges:

(1) MS-DRG 019 (Simultaneous Pancreas/Kidney Transplant with Hemodialysis).

(2) MS-DRGs 650 and 651 (Kidney Transplant with Hemodialysis with MCC, without MCC, respectively).

(3) MS-DRGs 682, 683, and 684 (Renal Failure with MCC, with CC, without CC/MCC, respectively).

(b) *Additional payment.* A hospital that meets the criteria of paragraph (a) of this section is paid an additional payment for each ESRD beneficiary discharge except those excluded under paragraph (a) of this section.

(1) The payment is based on the estimated weekly cost of dialysis and the average length of stay of ESRD beneficiaries for the hospital.

(2) The estimated weekly cost of dialysis is the average number of dialysis sessions furnished per week during the 12-month period that ended June 30, 1983 multiplied by the average cost of dialysis for the same period.

(3) The average cost of dialysis includes only those costs determined to be directly related to the dialysis service. (These costs include salary, employee health and welfare, drugs, supplies, and laboratory services.)

(4) The average cost of dialysis is reviewed and adjusted, if appropriate, at the time the composite rate reimbursement for outpatient dialysis is reviewed.

(5) The payment to a hospital equals the average length of stay of ESRD beneficiaries in the hospital, expressed as a ratio to one week, times the estimated weekly cost of dialysis multiplied by the number of ESRD beneficiary discharges except for those excluded under paragraph (a) of this section. This payment is made only on the Federal portion of the payment rate.

[50 FR 12741, Mar. 29, 1985, as amended at 57 FR 39824, Sept. 1, 1992; 69 FR 49244, Aug. 11, 2004; 73 FR 48755, Aug. 19, 2008; 85 FR 59021, Sept. 18, 2020]

**§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.**

CMS makes an additional payment to hospitals for indirect medical education costs using the following procedures:

(a) *Basic data.* CMS determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent residents (except as limited under paragraph (f) of this section) to the number of beds (as determined under paragraph (b) of this section).

(i) Except for the special circumstances for Medicare GME affiliated groups, emergency Medicare GME affiliated groups, and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section for cost reporting periods beginning on or after October 1, 1997, and for the special circumstances for closed hospitals or closed programs described in paragraph (f)(1)(ix) of this section for cost reporting periods beginning on or after October 1, 2002, and for Rural Track Programs within their 5-year cap building period described in paragraph (f)(1)(x)(B) in cost reporting periods beginning on or after October 1, 2022, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period after accounting for the cap on the number of allopathic and osteopathic full-time equivalent residents as described in paragraph (f)(1)(iv) of this section, and adding to the capped numerator any dental and

**§ 412.105**

**42 CFR Ch. IV (10–1–23 Edition)**

podiatric full-time equivalent residents.

(ii)(A) For new programs started prior to October 1, 2012, the exception for new programs described in paragraph (f)(1)(vii) of this section applies to each new program individually for which the full-time equivalent cap may be adjusted based on the period of years equal to the minimum accredited length of each new program.

(B) For new programs started on or after October 1, 2012, the exception for new programs described in paragraph (f)(1)(vii) of this section applies to each new program individually during the cost reporting periods prior to the beginning of the applicable hospital's cost reporting period that coincides with or follows the start of the sixth program year of the first new program started, for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e)(1) of this chapter, and prior to the beginning of the applicable hospital's cost reporting period that coincides with or follows the start of the sixth program year of the each individual new program started, for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e)(3) of this chapter.

(iii) The exception for closed hospitals and closed programs described in paragraph (f)(1)(ix) of this section applies only through the end of the first 12-month cost reporting period in which the receiving hospital trains the displaced full-time equivalent residents.

(iv) In the cost reporting period following the last year the receiving hospital's full-time equivalent cap is adjusted for the displaced resident(s), the resident-to-bed ratio cap in paragraph (a)(1) of this section is calculated as if the displaced full-time equivalent residents had not trained at the receiving hospital in the prior year.

(2) The hospital's DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs, excluding outlier payments for inpatient operating costs determined under subpart F of this part and additional payments made under the provisions of § 412.106.

(b) *Determination of the number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period. This count of available bed days excludes bed days associated with—

(1) Beds in a unit or ward that is not occupied to provide a level of care that would be payable under the acute care hospital inpatient prospective payment system at any time during the 3 preceding months (the beds in the unit or ward are to be excluded from the determination of available bed days during the current month);

(2) Beds in a unit or ward that is otherwise occupied (to provide a level of care that would be payable under the acute care hospital inpatient prospective payment system) that could not be made available for inpatient occupancy within 24 hours for 30 consecutive days;

(3) Beds in excluded distinct part hospital units;

(4) Beds otherwise countable under this section used for outpatient observation services, skilled nursing swing-bed services, or inpatient hospice services.

(5) Beds or bassinets in the healthy newborn nursery; and

(6) Custodial care beds.

(c) *Measurement for teaching activity.* The factor representing the effect of teaching activity on inpatient operating costs equals .405 for discharges occurring on or after May 1, 1986.

(d) *Determination of education adjustment factor.* Each hospital's education adjustment factor is calculated as follows:

(1) *Step one.* A factor representing the sum of 1.00 plus the hospital's ratio of full-time equivalent residents to beds, as determined under paragraph (a)(1) of this section, excluding beds temporarily added during the time frame that the Public Health Emergency as defined in § 400.200 of this chapter is in effect, is raised to an exponential power equal to the factor set forth in paragraph (c) of this section.

(2) *Step two.* The factor derived from step one is reduced by 1.00.



(3) *Step three.* The factor derived from completing steps one and two is multiplied by “c”, and where “c” is equal to the following:

(i) For discharges occurring on or after October 1, 1988, and before October 1, 1997, 1.89.

(ii) For discharges occurring during fiscal year 1998, 1.72.

(iii) For discharges occurring during fiscal year 1999, 1.6.

(iv) For discharges occurring during fiscal year 2000, 1.47.

(A) Each hospital receives an amount that is equal in the aggregate to the difference between the amount of payments made to the hospital if “c” equaled 1.6, rather than 1.47.

(B) The payment of this amount will not affect any other payments, determinations, or budget neutrality adjustments.

(v) For fiscal year 2001—

(A) For discharges occurring on or after October 1, 2000 and before April 1, 2001, 1.54.

(B) For discharges occurring on or after April 1, 2001 and before October 1, 2001, the adjustment factor is determined as if “c” equaled 1.66, rather than 1.54. This payment increase will not apply to discharges occurring after fiscal year 2001 and will not be taken into account in calculating the payment amounts applicable for discharges occurring after fiscal year 2001.

(vi) For discharges occurring during fiscal year 2002, 1.6.

(vii) For discharges occurring on or after October 1, 2002 and before April 1, 2004, 1.35.

(viii) For discharges occurring on or after April 1, 2004 and before October 1, 2004, 1.47.

(ix) For discharges occurring during fiscal year 2005, 1.42.

(x) For discharges occurring during fiscal year 2006, 1.37.

(xi) For discharges occurring during fiscal year 2007, 1.32.

(xii) For discharges occurring during fiscal year 2008 and thereafter, 1.35.

(4) For discharges occurring on or after July 1, 2005, with respect to FTE residents added as a result of increases in the FTE resident cap under paragraph (f)(1)(iv)(C) of this section, the factor derived from completing steps

one and two is multiplied by ‘c’, where ‘c’ is equal to 0.66.

(e)(1) *Determination of payment amount.* Each hospital’s indirect medical education payment under the prospective payment system for inpatient operating costs is determined by multiplying the total DRG revenue for inpatient operating costs, as determined under paragraph (a)(2) of this section, by the applicable education adjustment factor derived in paragraph (d) of this section.

(2) For discharges occurring on or after July 1, 2005, a hospital that counts additional residents as a result of an increase in its FTE resident cap under paragraph (f)(1)(iv)(C) of this section will receive indirect medical education payments based on the sum of the following two indirect medical education adjustment factors:

(i) An adjustment factor that is calculated using the schedule of formula multipliers in paragraph (d)(3) of this section and the hospital’s FTE resident count, not including residents attributable to an increase in its FTE cap under paragraph (f)(1)(iv)(C) under this section; and

(ii) An adjustment factor that is calculated using the applicable formula multiplier under paragraph (d)(4) of this section, and the additional number of FTE residents that are attributable to the increase in the hospital’s FTE resident cap under paragraph (f)(1)(iv)(C) in this section.

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) For cost reporting periods beginning on or after July 1, 1991, the count of full-time equivalent residents for the purpose of determining the indirect medical education adjustment is determined as follows:

(i) The resident must be enrolled in an approved teaching program. An approved teaching program is one that meets one of the following requirements:

(A) Is approved by one of the national organizations listed in §415.152 of this chapter.

(B) May count towards certification of the participant in a specialty or subspecialty listed in the current edition of either of the following publications:

(1) The Directory of Graduate Medical Education Programs published by the American Medical Association.

(2) The Annual Report and Reference Handbook published by the American Board of Medical Specialties.

(C) Is approved by the Accreditation Council for Graduate Medical Education (ACGME) as a fellowship program in geriatric medicine.

(D) Is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training, regardless of whether the standard provides exceptions or exemptions.

(ii) In order to be counted, the resident must be assigned to one of the following areas:

(A) The portion of the hospital subject to the hospital inpatient prospective payment system.

(B) The outpatient department of a hospital that meets provider-based status as defined at § 413.65(a)(2) of this subchapter.

(C) The portions of a hospital located in Puerto Rico that are subject to the hospital inpatient prospective payment system, including off-campus outpatient departments that meet provider-based status as defined at § 413.65(a)(2) of this subchapter.

(D) The portions of a hospital that are reimbursed under a reimbursement system authorized under section 1814(b)(3) of the Act.

(E) Effective for discharges occurring on or after October 1, 1997, the time spent by a resident in a nonprovider setting in patient care activities, as defined in § 413.75(b) of this subchapter, under an approved medical residency training program is counted towards the determination of full-time equivalency if the criteria set forth in § 413.78(c), (d), (e), (f), or (g) of this subchapter, as applicable, are met.

(iii)(A) Full-time equivalent status is based on the total time necessary to fill a residency slot. No individual may be counted as more than one full-time equivalent. If a resident is assigned to more than one hospital, the resident counts as a partial full-time equivalent

based on the proportion of time worked in any areas of the hospital listed in paragraph (f)(1)(ii) of this section to the total time worked by the resident. A hospital cannot claim the time spent by residents training at another hospital, unless the exception provided at § 413.78(i) of this chapter applies. A part-time resident or one working in an area of the hospital other than those listed under paragraph (f)(1)(ii) of this section (such as a freestanding family practice center or an excluded hospital unit) would be counted as a partial full-time equivalent based on the proportion of time assigned to an area of the hospital listed in paragraph (f)(1)(ii) of this section, compared to the total time necessary to fill a full-time residency slot.

(B) The time spent by a resident in research that is not associated with the treatment or diagnosis of a particular patient is not countable.

(C) Effective for cost reporting periods beginning on or after January 1, 1983, except for research activities described in paragraph (f)(1)(iii)(B) of this section, the time a resident is training in an approved medical residency program in a hospital setting, as described in paragraphs (f)(1)(ii)(A) through (f)(1)(ii)(D) of this section, must be spent in either patient care activities, as defined in § 413.75(b) of this subchapter, or in nonpatient care activities, such as didactic conferences and seminars, to be counted. This provision may not be applied in a manner that would require the reopening of settled cost reports, except those cost reports on which, as of March 23, 2010, there is a jurisdictionally proper appeal pending on direct GME or IME payments.

(D) Effective for cost reporting periods beginning on or after January 1, 1983, the time spent by a resident in an approved medical residency program on vacation, sick leave, or other approved leave that does not prolong the total time the resident is participating in the approved program beyond the normal duration of the program is countable. This provision may not be applied in a manner that would require the reopening of settled cost reports, except those cost reports on which, as

of March 23, 2010, there is a jurisdictionally proper appeal pending on direct GME or IME payments.

(iv)(A) Effective for discharges occurring on or after October 1, 1997, the total number of FTE residents in the fields of allopathic and osteopathic medicine in either a hospital or a non-hospital setting that meets the criteria listed in paragraph (f)(1)(ii) of this section may not exceed the number of such FTE residents in the hospital (or, in the case of a hospital located in a rural area, effective for discharges occurring on or after April 1, 2000, 130 percent of that number) with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996.

(B)(I) Effective for portions of cost reporting periods beginning on or after July 1, 2005, a hospital's otherwise applicable FTE resident cap may be reduced if its reference resident level, as determined under §413.79(c)(1)(ii)(A) of this subchapter, is less than its otherwise applicable FTE resident cap in a reference cost reporting period, in accordance with the provisions of §413.79(c)(3) of this subchapter. The reduction is 75 percent of the difference between the otherwise applicable FTE resident cap and the reference resident level.

(2) Effective for portions of cost reporting periods beginning on or after July 1, 2011, a hospital's otherwise applicable FTE resident cap may be reduced if its reference resident level, as determined under §413.79(c)(1)(ii)(B) of this subchapter, is less than its otherwise applicable FTE resident cap in a reference cost reporting period, in accordance with the provisions of §413.79(m) of this subchapter. The reduction shall take into account the hospital's FTE resident cap as reduced under paragraph (f)(1)(iv)(B)(I). The reduction is 65 percent of the difference between the otherwise applicable FTE resident cap and the reference resident level.

(C)(I) Effective for portions of cost reporting periods beginning on or after July 1, 2005, a hospital may qualify to receive an increase in its otherwise applicable FTE resident cap (up to 25 additional FTEs) if the criteria specified

in §413.79(c)(4) of this subchapter are met.

(2) Effective for portions of cost reporting periods beginning on or after July 1, 2011, a hospital may qualify to receive an increase in its otherwise applicable FTE resident cap (up to 75 additional FTEs) if the criteria specified in §413.79(n) of this subchapter are met.

(3) Effective for portions of cost reporting periods beginning on or after July 1, 2023, a hospital may qualify to receive an increase in its otherwise applicable FTE resident cap if the criteria specified in §413.79(p) of this subchapter are met.

(D) A rural hospital redesignated as urban after September 30, 2004, as a result of the most recent census data and implementation of the new labor market area definitions announced by OMB on June 6, 2003, may retain the increases to its full-time equivalent resident cap that it received under paragraphs (f)(1)(iv)(A) and (f)(1)(vii) of this section while it was located in a rural area. Effective October 1, 2014, if a rural hospital is redesignated as urban due to the most recent OMB standards for delineating statistical areas adopted by CMS, the redesignated urban hospital may retain any existing increases to its FTE resident cap that it had received prior to when the redesignation became effective. Effective October 1, 2014, if a rural hospital is redesignated as urban due to the most recent OMB standards for delineating statistical areas adopted by CMS, the redesignated urban hospital may receive an increase to its FTE resident cap for a new program, in accordance with paragraph (e) of this section, if it received a letter of accreditation for the new program and/or started training residents in the new program prior to the redesignation becoming effective.

(v)(A) For a hospital's cost reporting periods beginning on or after October 1, 1997, and before October 1, 1998, the total number of full-time equivalent residents for payment purposes is equal to the average of the actual full-time equivalent resident counts (subject to the requirements listed in paragraphs (f)(1)(ii)(C) and (f)(1)(iv) of this section) for that cost reporting period and the preceding cost reporting period.

(B) For a hospital's cost reporting periods beginning on or after October 1, 1998, the total number of full-time equivalent residents for payment purposes is equal to the average of the actual full-time equivalent resident count (subject to the requirements set forth in paragraphs (f)(1)(ii)(C) and (f)(1)(iv) of this section) for that cost reporting period and the preceding two cost reporting periods.

(C) For new programs started prior to October 1, 2012, if a hospital qualified for an adjustment to the limit established under paragraph (f)(1)(iv) of this section for new medical residency programs created under paragraph (f)(1)(vii) of this section, the count of residents participating in new medical residency training programs above the number included in the hospital's full-time equivalent count for the cost reporting period ending during calendar year 1996 is added after applying the averaging rules in paragraph (f)(1)(v)(B) of this section for a period of years. Residents participating in new medical residency training programs are included in the hospital's full-time equivalent count before applying the averaging rules after the period of years has expired. For purposes of this paragraph, for each new program started, the period of years equals the minimum accredited length for each new program. The period of years for each new program begins when the first resident begins training in each new program.

(D) For new programs started on or after October 1, 2012, for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e) of this chapter, full-time equivalent residents participating in new medical residency training programs are excluded from the hospital's full-time equivalent count before applying the averaging rules during the cost reporting periods prior to the beginning of the applicable hospital's cost reporting period that coincides with or follows the start of the sixth program year of the first new program started, for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e)(1) of this chapter, and prior to the beginning of the applicable hospital's cost

reporting period that coincides with or follows the start of the sixth program year of the each individual new program started, for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e)(3) of this chapter. Beginning with the applicable hospital's cost reporting period that coincides with or follows the start of the sixth program year of the first new program started for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e)(1) of this chapter, and beginning with the applicable hospital's cost reporting period that coincides with or follows the start of the sixth program year of each individual new program started for hospitals for which the full-time equivalent cap may be adjusted in accordance with § 413.79(e)(3) of this chapter, full-time equivalent residents participating in new medical residency training programs are included in the hospital's full-time equivalent count before applying the averaging rules in paragraph (f)(1)(v)(B) of this section.

(E) Subject to the provisions of paragraph (f)(1)(ix) of this section, full-time equivalent residents that are displaced by the closure of either another hospital or another hospital's program are added to the full-time equivalent count after applying the averaging rules in paragraph (f)(1)(v)(B) of this section for the receiving hospital for the duration of time that the displaced residents are training at the receiving hospital.

(F) (1) Subject to the provisions of paragraph (f)(1)(x) of this section, effective for cost reporting periods beginning on or after April 1, 2000, and beginning before October 1, 2022, full-time equivalent residents at an urban hospital in a rural track program are included in the urban hospital's rolling average calculation described in paragraph (f)(1)(v)(B) of this section.

(2) Subject to the provisions of paragraph (f)(1)(x) of this section, for cost reporting periods beginning on or after October 1, 2022, full-time equivalent residents at an urban hospital or rural hospital in a Rural Track Program are excluded from the rolling average calculation described in paragraph (f)(1)(v)(B) of this section during the cost reporting periods prior to the beginning of the applicable hospital's

cost reporting period that coincides with or follows the start of the sixth program year of each rural track.

(vi) Hospitals that are part of the same Medicare GME affiliated group or emergency Medicare GME affiliated group (as defined in §413.75(b) of this subchapter) may elect to apply the limit specified in paragraph (f)(1)(iv) of this section on an aggregate basis, as specified in §413.79(f) of this subchapter. Effective beginning on or after October 1, 2008, home and host hospitals with valid emergency Medicare GME affiliation agreements are exempt from the application of the ratio cap specified in paragraph (a)(1)(i) of this section.

(vii) (A) If a hospital establishes a new medical residency training program, as defined in §413.79(l) of this subchapter, the hospital's full-time equivalent cap may be adjusted in accordance with the provisions of §413.79(e) of this subchapter.

(B)(1) A hospital that, as of December 27, 2020, has a full-time equivalent cap of less than 1.0 FTE based on a cost reporting period beginning before October 1, 1997, that begins training residents in a new medical residency training program, as defined at §413.79(l) of this subchapter, in a cost reporting period beginning on or after December 27, 2020, and before December 26, 2025, may receive an adjustment to its full-time equivalent cap when it trains at least 1.0 FTE in such new medical residency training program(s), to be calculated in accordance with §413.79(e) of this subchapter.

(2) A hospital that has a full-time equivalent cap of no more than 3.0 FTEs based on a cost reporting period beginning on or after October 1, 1997, and before December 27, 2020, that begins training residents in a new medical residency training program, as defined at §413.79(l) of this subchapter, in a cost reporting period beginning on or after December 27, 2020 and before December 26, 2025, may receive an adjustment to its full-time equivalent cap when it trains more than 3.0 FTE in such new medical residency training program(s), to be calculated in accordance with the provisions of §413.79(e) of this subchapter.

(viii) A hospital that began construction of its facility prior to August 5, 1997, and sponsored new medical residency training programs on or after January 1, 1995 and on or before August 5, 1997, that either received initial accreditation by the appropriate accrediting body or temporarily trained residents at another hospital(s) until the facility was completed, may receive an adjustment to its full-time equivalent cap in accordance with the provisions of §413.79(g) of this subchapter.

(ix)(A) A hospital may receive a temporary adjustment to its FTE resident cap to reflect displaced residents added because of another hospital's closure if the hospital meets the criteria specified in §413.79(h)(1) and (2) of this subchapter. If a hospital that closes its residency training program agrees to temporarily reduce its FTE resident cap according to the criteria specified in §413.79(h)(1) and (h)(3)(ii) of this subchapter, another hospital(s) may receive a temporary adjustment to its FTE resident cap to reflect displaced residents added because of the closure of the residency training program if the criteria specified in §413.79(h)(1) and (h)(3)(i) of this subchapter are met.

(B) A hospital may receive a permanent adjustment to its FTE resident cap as a result of slots that were redistributed from a closed hospital, as defined at §413.79(h)(1)(i) of this subchapter, if the hospital meets the requirements at §413.79(o) of this subchapter.

(x) (A) For rural track programs started in a cost reporting period beginning before October 1, 2022, an urban hospital that establishes a new residency program (as defined in §413.79(l) of this subchapter), or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks in accordance with the applicable provisions of §413.79(k) of this subchapter.

(B) For cost reporting periods beginning on or after October 1, 2022, an urban hospital or rural hospital that establishes a new residency program (as defined in §413.79(l) of this subchapter) that is a Rural Track Program (as defined at §413.75(b) of this subchapter), or adds an additional site

## § 412.105

## 42 CFR Ch. IV (10–1–23 Edition)

to a Rural Track Program, may include in its FTE count residents in the Rural Track Program in accordance with the applicable provisions of § 413.79(k) of this subchapter.

(xi) Effective for discharges occurring in cost reporting periods beginning on or after November 29, 1999, a hospital may receive an adjustment to its FTE cap of up to three additional FTEs to the extent that the additional residents would have been counted as primary care residents for purposes of the hospital's FTE cap but for the fact that the additional residents were on maternity or disability leave or a similar approved leave of absence, in accordance with the provisions of § 413.79(i) of this subchapter.

(xii) For discharges occurring on or after October 1, 1997, a non-Veterans Affairs (VA) hospital may receive a temporary adjustment to its FTE cap to reflect residents who had been previously trained at a VA hospital and were subsequently transferred to the non-VA hospital, if the hospital meets the criteria and other provisions of § 413.79(j) of this subchapter.

(xiii) For a hospital that was paid under part 413 of this chapter as a hospital excluded from the hospital inpatient prospective payment system and that subsequently becomes subject to the hospital inpatient prospective payment system, the limit on the total number of FTE residents for payment purposes is determined based on the data from the hospital's most recent cost reporting period ending on or before December 31, 1996.

(xiv) In the case of a merger of a hospital that is excluded from the hospital inpatient prospective payment system and an acute care hospital subject to the hospital inpatient prospective payment system, if the surviving hospital is a hospital subject to the hospital inpatient prospective payment system and no hospital unit that is excluded from the hospital inpatient prospective payment system is created as a result of the merger, the surviving hospital's number of FTE residents for payment purposes is equal to the sum of the FTE resident count of the hospital that is subject to the hospital inpatient prospective payment system as determined under paragraph (f)(1)(ii)(B) of

this section and the limit on the total number of FTE residents for the excluded hospital as determined under paragraph (f)(1)(xiii) of this section.

(xv) Effective for discharges occurring on or after October 1, 2005, an urban hospital that reclassifies to a rural area under § 412.103 for fewer than 10 continuous years and then subsequently elects to revert back to urban classification will not be allowed to retain the adjustment to its IME FTE resident cap that it received as a result of being reclassified as rural.

(2) To include a resident in the full-time equivalent count for a particular cost reporting period, the hospital must furnish the following information. The information must be certified by an official of the hospital and, if different, an official responsible for administering the residency program.

(i) A listing, by specialty, of all residents assigned to the hospital and providing services to the hospital during the cost reporting period.

(ii) The name and social security number of each resident.

(iii) The dates the resident is assigned to the hospital.

(iv) The dates the resident is assigned to other hospitals or other freestanding providers and any nonprovider setting during the cost reporting period.

(v) The proportion of the total time necessary to fill a residency slot that the resident is assigned to an area of the hospital listed under paragraph (f)(1)(ii) of this section.

(3) Fiscal intermediaries must verify the correct count of residents.

(g) *Indirect medical education payment for managed care enrollees.* For portions of cost reporting periods occurring on or after January 1, 1998, a payment is made to a hospital for indirect medical education costs, as determined under paragraph (e) of this section, for discharges associated with individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act or with a Medicare + Choice organization under title XVIII, Part C of the Act during the period, according to the applicable payment percentages described in

§§413.76(c)(1) through (c)(5) of this subchapter.

[50 FR 12741, Mar. 29, 1985. Redesignated at 56 FR 43241, Aug. 30, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §412.106, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.**

(a) *General considerations.* (1) The factors considered in determining whether a hospital qualifies for a payment adjustment include the number of beds, the number of patient days, and the hospital's location.

(i) The number of beds in a hospital is determined in accordance with §412.105(b).

(ii) For purposes of this section, the number of patient days in a hospital includes only those days attributable to units or wards of the hospital providing acute care services generally payable under the prospective payment system and excludes patient days associated with—

(A) Beds in excluded distinct part hospital units;

(B) Beds otherwise countable under this section used for outpatient observation services, skilled nursing swing-bed services, or inpatient hospice services;

(C) Beds in a unit or ward that is not occupied to provide a level of care that would be payable under the acute care hospital inpatient prospective payment system at any time during the 3 preceding months (the beds in the unit or ward are to be excluded from the determination of available bed days during the current month); and

(D) Beds in a unit or ward that is otherwise occupied (to provide a level of care that would be payable under the acute care hospital inpatient prospective payment system) that could not be made available for inpatient occupancy within 24 hours for 30 consecutive days.

(iii) The hospital's location, in an urban or rural area, is determined in accordance with the definitions in §412.64, except that a reclassification that results from an urban hospital re-

classified as rural as set forth in §412.103 is classified as rural.

(2) The payment adjustment is applied to the hospital's DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs, excluding outlier payments for inpatient operating costs under subpart F of this part and additional payments made under the provisions of §412.105.

(b) *Determination of a hospital's disproportionate patient percentage—*(1) *General rule.* A hospital's disproportionate patient percentage is determined by adding the results of two computations and expressing that sum as a percentage.

(2) *First computation: Federal fiscal year.* For each month of the Federal fiscal year in which the hospital's cost reporting period begins, CMS—

(i) Determines the number of patient days that—

(A) Are associated with discharges occurring during each month; and

(B) Are furnished to patients who during that month were entitled to both Medicare Part A (including Medicare Advantage (Part C)) and SSI, excluding those patients who received only State supplementation;

(ii) Adds the results for the whole period; and

(iii) Divides the number determined under paragraph (b)(2)(ii) of this section by the total number of days that—

(A) Are associated with discharges that occur during that period; and

(B) Are furnished to patients entitled to Medicare Part A (including Medicare Advantage (Part C)).

(3) *First computation: Cost reporting period.* If a hospital prefers that CMS use its cost reporting period instead of the Federal fiscal year, it must furnish to CMS, through its intermediary, a written request including the hospital's name, provider number, and cost reporting period end date. This exception will be performed once per hospital per cost reporting period, and the resulting percentage becomes the hospital's official Medicare Part A/SSI percentage for that period.

(4) *Second computation.* The fiscal intermediary determines, for the same cost reporting period used for the first

computation, the number of the hospital's patient days of service for patients who were not entitled to Medicare Part A, and who were either eligible for Medicaid on such days as described in paragraph (b)(4)(i) of this section or who were regarded as eligible for Medicaid on such days and the Secretary has determined to include those days in this computation as described in paragraph (b)(4)(ii)(A) or (B) of this section. The fiscal intermediary then divides that number by the total number of patient days in the same period. For purposes of this second computation, the following requirements apply:

(i) For purposes of this computation, a patient is eligible for Medicaid on a given day if the patient is eligible on that day for inpatient hospital services under a State Medicaid plan approved under title XIX of the Act, regardless of whether particular items or services were covered or paid for on that day under the State plan.

(ii) For purposes of this computation, a patient is regarded as eligible for Medicaid on a given day if the patient receives health insurance authorized by a demonstration approved by the Secretary under section 1115(a)(2) of the Act for that day, where the cost of such health insurance may be counted as expenditures under section 1903 of the Act, or the patient has health insurance for that day purchased using premium assistance received through a demonstration approved by the Secretary under section 1115(a)(2) of the Act, where the cost of the premium assistance may be counted as expenditures under section 1903 of the Act, and in either case regardless of whether particular items or services were covered or paid for on that day by the health insurance. Of these patients regarded as eligible for Medicaid on a given day, only the days of patients meeting the following criteria on that day may be counted in this second computation:

(A) Patients who are provided by a demonstration authorized under section 1115(a)(2) of the Act health insurance that covers inpatient hospital services; or

(B) Patients who purchase health insurance that covers inpatient hospital

services using premium assistance provided by a demonstration authorized under section 1115(a)(2) of the Act and the premium assistance accounts for 100 percent of the premium cost to the patient.

(iii) Patients whose health care costs, including inpatient hospital services costs, for a given day are claimed for payment by a provider from an uncompensated, undercompensated, or other type of funding pool authorized under section 1115(a) of the Act to fund providers' uncompensated care costs are not regarded as eligible for Medicaid for purposes of paragraph (b)(4)(ii) of this section on that day and the days of such patients may not be included in this second computation.

(iv) The hospital has the burden of furnishing data adequate to prove eligibility for each Medicaid patient day claimed under this paragraph, and of verifying with the State that a patient was eligible for Medicaid during each claimed patient hospital day.

(v) For cost reporting periods beginning on or after October 1, 2009, the hospital must report the days in the numerator of the fraction in the second computation in a cost reporting period based on the date of discharge, the date of admission, or the dates of service. If a hospital seeks to change its methodology for reporting days in the numerator of the fraction in the second computation, the hospital must notify CMS, through its fiscal intermediary or MAC, in writing at least 30 days before the beginning of the cost reporting period in which the change would apply. The written notification must specify the methodology the hospital will use, the cost reporting period to which the requested change would apply, and the current methodology being used. Such a change will be effective only on the first day of a cost reporting period. If a hospital changes its methodology for reporting such days, CMS or the fiscal intermediary or MAC may adjust the number of days reported for a cost reporting period if it determines that any of those days have been counted in a prior cost reporting period.

(5) *Disproportionate patient percentage.* The intermediary adds the results of



the first computation made under either paragraph (b)(2) or (b)(3) of this section and the second computation made under paragraph (b)(4) of this section and expresses that sum as a percentage. This is the hospital's disproportionate patient percentage, and is used in paragraph (c) of this section.

(c) *Criteria for classification.* A hospital is classified as a "disproportionate share" hospital under any of the following circumstances:

(1) The hospital's disproportionate patient percentage, as determined under paragraph (b)(5) of this section, is at least equal to one of the following:

(i) 15 percent, if the hospital is located in an urban area, and has 100 or more beds, or is located in a rural area and has 500 or more beds.

(ii) 30 percent for discharges occurring before April 1, 2001, and 15 percent for discharges occurring on or after April 1, 2001, if the hospital is located in a rural area and either has more than 100 beds and fewer than 500 beds or is classified as a sole community hospital under §412.92.

(iii) 40 percent for discharges before April 1, 2001, and 15 percent for discharges occurring on or after April 1, 2001, if the hospital is located in an urban area and has fewer than 100 beds.

(iv) 45 percent for discharges before April 1, 2001, and 15 percent for discharges occurring on or after April 1, 2001, if the hospital is located in a rural area and has 100 or fewer beds.

(2) The hospital is located in an urban area, has 100 or more beds, and can demonstrate that, during its cost reporting period, more than 30 percent of its net inpatient care revenues are derived from State and local government payments for care furnished to indigent patients.

(d) *Payment adjustment factor*—(1) *Method of adjustment.* Subject to the reduction factor set forth in paragraph (e) of this section, if a hospital serves a disproportionate number of low-income patients, its DRG revenues for inpatient operating costs are increased by an adjustment factor as specified in paragraph (d)(2) of this section.

(2) *Payment adjustment factors.* (i) If the hospital meets the criteria of paragraph (c)(1)(i) of this section, the pay-

ment adjustment factor is equal to one of the following:

(A) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is as follows:

(1) For discharges occurring on or after April 1, 1990, and before January 1, 1991, 5.62 percent plus 65 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(2) For discharges occurring on or after January 1, 1991, and before October 1, 1993, 5.62 percent plus 70 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(3) For discharges occurring on or after October 1, 1993, and before October 1, 1994, 5.88 percent plus 80 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(4) For discharges occurring on or after October 1, 1994, 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(B) If the hospital's disproportionate patient percentage is less than 20.2 percent, the applicable payment adjustment factor is as follows:

(1) For discharges occurring on or after April 1, 1990, and before October 1, 1993, 2.5 percent plus 60 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(2) For discharges occurring on or after October 1, 1993, 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital meets the criteria of paragraph (c)(1)(ii) of this section, the payment adjustment factor is equal to one of the following:

(A) If the hospital is classified as a rural referral center—

(1) For discharges occurring before April 1, 2001, the payment adjustment factor is 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent.

(2) For discharges occurring on or after April 1, 2001, and before April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital's disproportionate patient percentage is greater than 19.3 percent and less than 30 percent, the applicable payment adjustment factor is 5.25 percent.

(iii) If the hospital's disproportionate patient percentage is greater than or equal to 30 percent, the applicable payment adjustment factor is 5.25 percent plus 60 percent of the difference between 30 percent and the hospital's disproportionate patient percentage.

(3) For discharges occurring on or after April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than or equal to 20.2 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(B) If the hospital is classified as a sole community hospital—

(1) For discharges occurring before April 1, 2001, the payment adjustment factor is 10 percent.

(2) For discharges occurring on or after April 1, 2001 and before April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent and less than 30 percent, the applicable payment adjustment factor is 5.25 percent.

(iii) If the hospital's disproportionate patient percentage is equal to or great-

er than 30 percent, the applicable payment adjustment factor is 10 percent.

(3) For discharges occurring on or after April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than or equal to 20.2 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(iii) The maximum payment adjustment factor is 12 percent.

(C) If the hospital is classified as both a rural referral center and a sole community hospital, the payment adjustment is—

(1) For discharges occurring before April 1, 2001, the greater of—

(i) 10 percent; or

(ii) 4 percent plus 60 percent of the difference between the hospital's disproportionate patient percentage and 30 percent.

(2) For discharges occurring on or after April 1, 2001 and before April 1, 2004, the greater of the adjustments determined under paragraphs (d)(2)(i)(A) or (d)(2)(i)(B) of this section.

(3) For discharges occurring on or after April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than 20.2 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(D) If the hospital is classified as a rural hospital and is not classified as either a sole community hospital or a rural referral center, and has 100 or more beds—

(1) For discharges occurring before April 1, 2001, the payment adjustment factor is 4 percent.

(2) For discharges occurring on or after April 1, 2001 and before April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between the hospital's disproportionate patient percentage and 15 percent.

(ii) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent, the applicable payment adjustment factor is 5.25 percent.

(3) For discharges occurring on or after April 1, 2004, the following applies:

(i) If the hospital's disproportionate patient percentage is less than or equal to 20.2 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(ii) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(iii) The maximum payment adjustment factor is 12 percent.

(iii) If the hospital meets the criteria of paragraph (c)(1)(iii) of this section—

(A) For discharges occurring before April 1, 2001, the payment adjustment factor is 5 percent.

(B) For discharges occurring on or after April 1, 2001 and before April 1, 2004, the following applies:

(1) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between the hospital's disproportionate patient percentage and 15 percent.

(2) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent, the applicable payment adjustment factor is 5.25 percent.

(C) For discharges occurring on or after April 1, 2004, the following applies:

(1) If the hospital's disproportionate patient percentage is less than or equal to 20.2 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(2) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(3) The maximum payment adjustment factor is 12 percent.

(iv) If the hospital meets the criteria of paragraph (c)(1)(iv) of this section—

(A) For discharges occurring before April 1, 2001, the payment adjustment factor is 4 percent.

(B) For discharges occurring on or after April 1, 2001 and before April 1, 2004, the following applies:

(1) If the hospital's disproportionate patient percentage is less than 19.3 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between the hospital's disproportionate patient percentage and 15 percent.

(2) If the hospital's disproportionate patient percentage is equal to or greater than 19.3 percent, the applicable payment adjustment factor is 5.25 percent.

(C) For discharges occurring on or after April 1, 2004, the following applies:

(1) If the hospital's disproportionate patient percentage is less than or equal to 20.2 percent, the applicable payment adjustment factor is 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

(2) If the hospital's disproportionate patient percentage is greater than 20.2 percent, the applicable payment adjustment factor is 5.88 percent plus 82.5 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage.

(3) Except as provided in paragraph (d)(2)(iv)(D) of this section, the maximum payment adjustment factor is 12 percent.

(D) Effective for discharges occurring on or after October 1, 2006, for a hospital that is classified as a Medicare-dependent, small rural hospital under § 412.108, the payment adjustment factor limitation specified in paragraph (d)(2)(iv)(C)(3) does not apply.

(v) If the hospital meets the criteria of paragraph (c)(2) of this section, the payment adjustment factor is as follows:

(A) 30 percent for discharges occurring on or after April 1, 1990, and before October 1, 1991.

(B) 35 percent for discharges occurring on or after October 1, 1991.

(e) *Reduction in payments beginning FY 1998.* The amounts otherwise payable to a hospital under paragraph (d) of this section are reduced by the following:

(1) For FY 1998, 1 percent.

(2) For FY 1999, 2 percent.

(3) For FY 2000, 3 percent.

(4) For FY 2001:

(i) For discharges occurring on or after October 1, 2000 and before April 1, 2001, 3 percent.

(ii) For discharges occurring on or after April 1, 2001 and before October 1, 2001, 1 percent.

(5) For FY 2002, 3 percent.

(6) For FYs 2003 and thereafter, 0 percent.

(f) *Empirically justified Medicare DSH payments.* Effective for discharges on or after October 1, 2013, the amounts otherwise payable to a hospital under paragraph (d) of this section are reduced by 75 percent.

(g) *Additional payment for uncompensated care.* (1) *Payment rules.* Hospitals that qualify for payments under this section for fiscal year 2014 and each subsequent year, will receive an additional amount equal to the product of the following three factors:

(i) *Factor 1.* For FY 2014 and each subsequent fiscal year, a factor equal to the difference between:

(A) The most recently available estimates, as calculated by CMS' Office of the Actuary, of the aggregate amount of payments that would be made to such hospitals under paragraphs (a)

through (e) of this section if paragraph (f) of this section did not apply for the fiscal year; and

(B) The most recently available estimates, as calculated by CMS' Office of the Actuary, of the aggregate amount of payments that are made to such hospitals pursuant to paragraph (f) of this section for the fiscal year.

(ii) *Factor 2.* (A) For each of fiscal years 2014, 2015, 2016, and 2017, a factor equal to 1 minus the percent change in the percent of individuals under the age of 65 who are uninsured (and subtracting from the factor 0.1 percentage point for fiscal year 2014 and 0.2 percentage point for each of fiscal years 2015, 2016, and 2017), as determined by comparing—

(1) 18 percent, the percent of such individuals who are uninsured in 2013, based on the March 20, 2010, estimate of the “Insured Share of the Nonelderly Population Including All Residents” by the Congressional Budget Office.

(2) The percent of such individuals who are uninsured in the applicable fiscal year, based on the most recent estimate of the “Insured Share of the Nonelderly Population Including All Residents” by the Congressional Budget Office available at the time of development of the annual final rule for the hospital inpatient prospective payment system.

(B) For FY 2018 and subsequent fiscal years, a factor equal to 1 minus the percent change in the percent of individuals who are uninsured (and subtracting from the factor 0.2 percentage point for each of fiscal years 2018 and 2019), as determined by comparing the percent of individuals who are uninsured in—

(1) 2013 (as estimated by the Secretary, based on data from the Census Bureau or other sources the Secretary determines appropriate, and certified by the Chief Actuary of the CMS); and

(2) The most recent period for which data is available (as so estimated and certified).

(iii) *Factor 3.* A factor equal to the percent, for each inpatient prospective payment system hospital, that represents the quotient of:

(A) The amount of uncompensated care for such hospital as estimated by CMS.

(B) The aggregate amount of uncompensated care as estimated by CMS for all hospitals that are estimated to receive a payment under this section.

(C)(1) For fiscal years 2014 and 2015, CMS will base its estimates of the amount of hospital uncompensated care on the most recent available data on utilization for Medicaid and Medicare SSI patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (4) of this section.

(2) For fiscal year 2016, CMS will base its estimates of the amount of hospital uncompensated care on utilization data for Medicaid and Medicare SSI patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (4) of this section, using data on Medicaid utilization from 2012 or 2011 cost reports from the most recent HCRIS database extract, the 2012 cost report data submitted to CMS by IHS hospitals, and the most recent available data on Medicare SSI utilization.

(3) For fiscal year 2017, CMS will base its estimates of the amount of hospital uncompensated care on utilization data for Medicaid and Medicare SSI patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (4) of this section, using data on Medicaid utilization from 2011, 2012, and 2013 cost reports from the most recent HCRIS database extract, the 2011 and 2012 cost report data submitted to CMS by IHS hospitals, and the most recent available 3 years of data on Medicare SSI utilization (or, for Puerto Rico hospitals, a proxy for Medicare SSI utilization data).

(4) For fiscal year 2018, CMS will base its estimates of the amount of hospital uncompensated care on utilization data for Medicaid and Medicare SSI patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (b)(4) of this section, using data on Medicaid utilization from 2012 and 2013 cost reports from the most recent HCRIS database extract and 2012 cost report data submitted to CMS by IHS or Tribal hospitals and the most recent available 2 years of data on Medicare SSI utilization (or, for Puerto Rico hospitals, a proxy for Medicare SSI utilization data), and for hospitals other than Puerto Rico hospitals, IHS or Tribal hospitals, and all-inclusive rate

providers, data on uncompensated care costs, defined as charity care costs plus non-Medicare bad debt costs from 2014 cost reports from the most recent HCRIS database extract.

(5) For fiscal year 2019, CMS will base its estimates of the amount of hospital uncompensated care on utilization data for Medicaid and Medicare SSI patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (4) of this section, using data on Medicaid utilization from 2013 cost reports from the most recent HCRIS database extract and the most recent available year of data on Medicare SSI utilization (or, for Puerto Rico hospitals, a proxy for Medicare SSI utilization data), and for hospitals other than Puerto Rico hospitals, IHS or Tribal hospitals, and all-inclusive rate providers, data on uncompensated care costs, defined as charity care costs plus non-Medicare and nonreimbursable Medicare bad debt costs from 2014 and 2015 cost reports from the most recent HCRIS database extract.

(6) For fiscal year 2020, CMS will base its estimates of the amount of hospital uncompensated care on data on uncompensated care costs, defined as charity care costs plus non-Medicare and nonreimbursable Medicare bad debt costs from 2015 cost reports from the most recent HCRIS database extract, except that, for Puerto Rico hospitals and Indian Health Service or Tribal hospitals, CMS will base its estimates on utilization data for Medicaid and Medicare SSI patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (b)(4) of this section, using data on Medicaid utilization from 2013 cost reports from the most recent HCRIS database extract and the most recent available year of data on Medicare SSI utilization (or, for Puerto Rico hospitals, a proxy for Medicare SSI utilization data).

(7) For fiscal year 2021, CMS will base its estimates of the amount of hospital uncompensated care on data on uncompensated care costs, defined as charity care costs plus non-Medicare and nonreimbursable Medicare bad debt costs from 2017 cost reports from the most recent Hospital Cost Report Information System (HCRIS) database extract, except that, for Puerto Rico hospitals

and Indian Health Service or Tribal hospitals, CMS will base its estimates on utilization data for Medicaid and Medicare Supplemental Security Income (SSI) patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (b)(4) of this section, using data on Medicaid utilization from 2013 cost reports from the most recent HCRIS database extract and the most recent available year of data on Medicare SSI utilization (or, for Puerto Rico hospitals, a proxy for Medicare SSI utilization data).

(8) For fiscal year 2022, for all eligible hospitals, except Indian Health Service and Tribal hospitals and Puerto Rico hospitals that have a cost report for 2013, CMS will base its estimates of the amount of hospital uncompensated care on data on uncompensated care costs, defined as charity care costs plus non-Medicare and non-reimbursable Medicare bad debt costs from cost reports from the most recent cost reporting year for which audits have been conducted.

(9) For fiscal year 2022, for Indian Health Service and Tribal hospitals and Puerto Rico hospitals that have a cost report for 2013, CMS will base its estimates of the amount of hospital uncompensated care on utilization data for Medicaid and Medicare Supplemental Security Income (SSI) patients, as determined by CMS in accordance with paragraphs (b)(2)(i) and (b)(4) of this section, using data on Medicaid utilization from 2013 cost reports from the most recent HCRIS database extract and the most recent available year of data on Medicare SSI utilization (or, for Puerto Rico hospitals, a proxy for Medicare SSI utilization data).

(10) For fiscal year 2023, for all eligible hospitals, CMS will base its estimates of the amount of hospital uncompensated care on data on uncompensated care costs, defined as charity care costs plus non-Medicare and non-reimbursable Medicare bad debt costs from cost reports from the two most recent cost reporting years for which audits have been conducted. If a hospital is a new hospital (that is, a hospital that began participation in the Medicare program after the two most recent cost reporting years for which

audits have been conducted) or if the hospital is treated as a new hospital for purposes of Factor 3, the Medicare administrative contractor (MAC) will determine Factor 3 as the ratio of the hospital's uncompensated care costs from its FY 2023 cost report to the sum of uncompensated care costs for all DSH-eligible hospitals as estimated by CMS from the most recent cost reporting year for which audits have been conducted.

(11) For fiscal year 2024 and subsequent fiscal years, for all eligible hospitals, CMS will base its estimates of the amount of hospital uncompensated care on data on uncompensated care costs, defined as charity care costs plus non-Medicare and non-reimbursable Medicare bad debt costs from cost reports from the three most recent cost reporting years for which audits have been conducted. If a hospital is a new hospital (that is, a hospital that began participation in the Medicare program after the three most recent cost reporting years for which audits have been conducted) or if the hospital is treated as a new hospital for purposes of Factor 3, the Medicare administrative contractor (MAC) will determine Factor 3 as the ratio of the hospital's uncompensated care costs from its cost report for the applicable fiscal year to the sum of uncompensated care costs for all disproportionate share hospital (DSH)-eligible hospitals as estimated by CMS from the most recent cost reporting year for which audits have been conducted.

(2) *Preclusion of administrative and judicial review.* There is no administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, of the following:

(i) Any estimate of the Secretary for the purpose of determining the factors in paragraph (g)(1) of this section; and

(ii) Any period selected by the Secretary for such purposes.

(h) *Supplemental payment for Indian Health Service and Tribal hospitals and Puerto Rico hospitals.* (1) For fiscal year 2023 and each subsequent fiscal year, Indian Health Service and Tribal Hospitals and Puerto Rico hospitals that qualify for an additional payment for uncompensated care under paragraph

(g) of this section for the applicable fiscal year may also qualify to receive a supplemental payment.

(2) Indian Health Service and Tribal Hospitals and Puerto Rico hospitals that do not have a Factor 3 amount for fiscal year 2022 determined under paragraph (g)(1)(iii)(C)(9) of this section are not eligible to receive a supplemental payment under this paragraph (h).

(3) The amount of the supplemental payment for a fiscal year is determined as the difference between the following:

(i) A base year amount defined as the FY 2022 uncompensated care payment determined for the hospital, in accordance with paragraph (g)(1) of this section, adjusted by 1 plus the percent change in the aggregate amount of uncompensated care payments as estimated by CMS in accordance with paragraphs (g)(1)(i) and (ii) of this section between fiscal year 2022 and the applicable fiscal year. If the hospital did not qualify for an additional payment for uncompensated care under paragraph (g) of this section for fiscal year 2022, CMS uses the Factor 3 determined for the hospital under paragraph (g)(1)(iii)(C)(9) of this section to estimate the amount of the additional payment for uncompensated care that the hospital would have received in fiscal year 2022 if the hospital had qualified for an additional payment for uncompensated care under paragraph (g)(1) of this section for that fiscal year.

(ii) The additional payment for uncompensated care determined for the hospital for the applicable fiscal year, in accordance with paragraph (g)(1) of this section.

(4) If the base year amount under paragraph (h)(3)(i) of this section is equal to or lower than the additional payment for uncompensated care determined for the hospital for the applicable fiscal year in accordance with paragraph (g)(1) of this section, the hospital will not receive a supplemental payment under paragraph (h) of this section for that fiscal year.

(i) *Manner and timing of payments.* (1) Interim payments are made during the payment year to each hospital that is estimated to be eligible for payments under this section at the time of the annual final rule for the hospital inpa-

tient prospective payment system, subject to the final determination of eligibility at the time of cost report settlement for each hospital.

(2) Final payment determinations are made at the time of cost report settlement, based on the final determination of each hospital's eligibility for payment under this section.

[54 FR 36494, Sept. 1, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §412.106, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

**§412.107 Special treatment: Hospitals that receive an additional update for FYs 1998 and 1999.**

(a) *Additional payment update.* A hospital that meets the criteria set forth in paragraph (b) of this section receives the following increase to its applicable percentage amount set forth in §412.63 (p) and (q):

(1) For FY 1998, 0.5 percent.

(2) For FY 1999, 0.3 percent.

(b) *Criteria for classification.* A hospital is eligible for the additional payment update set forth in paragraph (a) of this section if it meets all of the following criteria:

(1) *Definition.* The hospital is not a Medicare-dependent, small rural hospital as defined in §412.108(a) and does not receive any additional payment under the following provisions:

(i) The indirect medical education adjustment made under §412.105.

(ii) The disproportionate share adjustment made under §412.106.

(2) *State criteria.* The hospital is located in a State in which the aggregate payment made under §412.112 (a) and (c) for hospitals described in paragraph (b)(1) of this section for their cost reporting periods beginning in FY 1995 is less than the allowable operating costs described in §412.2(c) for those hospitals.

(3) *Hospital criteria.* The aggregate payment made to the hospital under §412.112 (a) and (c) for the hospital's cost reporting period beginning in the fiscal year in which the additional payment update described in paragraph (a) of this section is made is less than the

## § 412.108

## 42 CFR Ch. IV (10–1–23 Edition)

allowable operating cost described in § 412.2(c) for that hospital.

[62 FR 46030, Aug. 29, 1997]

### § 412.108 Special treatment: Medicare-dependent, small rural hospitals.

(a) *Criteria for classification as a Medicare-dependent, small rural hospital—*

(1) *General considerations.* For cost reporting periods beginning on or after April 1, 1990, and ending before October 1, 1994, or for discharges occurring on or after October 1, 1997, and before October 1, 2024, a hospital is classified as a Medicare-dependent, small rural hospital if it meets all of the following conditions:

(i) It is located in a rural area (as defined in subpart D of this part) or it is located in a State with no rural area and satisfies any of the criteria under § 412.103(a)(1) or (3) or under § 412.103(a)(2) as of January 1, 2018.

(ii) The hospital has 100 or fewer beds as defined in § 412.105(b) during the cost reporting period.

(iii) The hospital is not also classified as a sole community hospital under § 412.92.

(iv) At least 60 percent of the hospital's inpatient days or discharges were attributable to individuals entitled to Medicare Part A benefits during the hospital's cost reporting period or periods as follows, subject to the provisions of paragraph (a)(1)(v) of this section:

(A) The hospital's cost reporting period ending on or after September 30, 1987 and before September 30, 1988.

(B) If the hospital does not have a cost reporting period that meets the criterion set forth in paragraph (a)(1)(iv)(A) of this section, the hospital's cost reporting period beginning on or after October 1, 1986, and before October 1, 1987.

(C) At least two of the last three most recent audited cost reporting periods for which the Secretary has a settled cost report.

(v) If the cost reporting period determined under paragraph (a)(1)(iv) of this section is for less than 12 months, the hospital's most recent 12-month or longer cost reporting period before the short period is used.

(2) *Counting days and discharges.* In counting inpatient days and discharges

for purposes of meeting the criteria in paragraph (a)(1)(iii) of this section, only days and discharges from acute care inpatient hospital stays are counted (including days and discharges from swing beds when used for acute care inpatient hospital services), but not including days and discharges from units excluded from the prospective payment system under §§ 412.25 through 412.30 or from newborn nursery units. For purposes of this section, a transfer as defined in § 412.4(b) is considered to be a discharge.

(3) *Criteria for hospitals that have remote location(s).* For a hospital with a main campus and one or more remote locations under a single provider agreement where services are provided and billed under the inpatient hospital prospective payment system and that meets the provider-based criteria at § 413.65 of this chapter as a main campus and a remote location of a hospital, combined data from the main campus and its remote location(s) are required to demonstrate that the criteria in paragraphs (a)(1) and (2) of this section are met. For the location requirement specified in paragraph (a)(1)(i) of this section, the hospital must demonstrate that the main campus and its remote locations each independently satisfy this requirement.

(b) *Classification procedures.* (1) The MAC determines whether a hospital meets the criteria specified in paragraph (a) of this section.

(2) A hospital must submit a written request along with qualifying documentation to its fiscal intermediary to be considered for MDH status based on the criterion under paragraph (a)(1)(iii)(C) of this section.

(3) The MAC will make its determination and notify the hospital within 90 days from the date that it receives the hospital's request and all of the required documentation.

(4) For applications received on or before September 30, 2018, a determination of MDH status made by the MAC is effective 30 days after the date the MAC provides written notification to the hospital. For applications received on or after October 1, 2018, a determination of MDH status made by the MAC is effective as of the date the



MAC receives the complete application. An approved MDH status determination remains in effect unless there is a change in the circumstances under which the status was approved.

(i) An approved MDH must notify the MAC if any change occurs that is specified in paragraph (b)(4)(ii) of this section occurs. If CMS determines that an MDH failed to comply with this requirement, CMS will cancel the hospital's classification as an MDH effective with the date that the hospital no longer met the criteria for such status, consistent with the provisions of §405.1885 of this chapter.

(ii) An MDH must report the following to the MAC within 30 days of the event:

(A) The number of beds increases to more than 100.

(B) Its geographic classification changes.

(iii) An MDH must report to the MAC if it becomes aware of any change that would affect its classification as an MDH beyond the events listed in paragraph (b)(4)(ii) of this section within 30 days of the event. If CMS determines that an MDH has failed to comply with this requirement, CMS will cancel the hospital's classification as an MDH effective with the date the hospital became aware of the event that resulted in the MDH no longer meeting the criteria for such classification, consistent with the provisions of §405.1885 of this chapter.

(5) The MAC will evaluate on an ongoing basis, whether or not a hospital continues to qualify for MDH status. This evaluation includes an ongoing review to ensure that the hospital continues to meet all of the criteria specified in paragraph (a) of this section.

(6) If the MAC determines that a hospital no longer qualifies for MDH status, the change in status will become effective 30 days after the date the MAC provides written notification to the hospital.

(7) A hospital may reapply for MDH status following its disqualification only after it has completed another cost reporting period that has been audited and settled. The hospital must reapply for MDH status in writing to its MAC and submit the required documentation.

(8) If a hospital disagrees with an MAC's determination regarding the hospital's initial or ongoing MDH status, the hospital may notify its MAC and submit other documentable evidence to support its claim that it meets the MDH qualifying criteria.

(9) The MAC's initial and ongoing determination is subject to review under subpart R of Part 405 of this chapter. The time required by the MAC to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for that review.

(c) *Payment methodology.* A hospital that meets the criteria in paragraph (a) of this section is paid for its inpatient operating costs the sum of paragraphs (c)(1) and (c)(2) of this section.

(1) The Federal payment rate applicable to the hospital, as determined under subpart D of this part, subject to the regional floor defined in §412.70(c)(6).

(2) The amount, if any, determined as follows:

(i) For discharges occurring during the first three 12-month cost reporting periods that begin on or after April 1, 1990, 100 percent of the amount that the Federal rate determined under paragraph (c)(1) of this section is exceeded by the higher of the following:

(A) The hospital-specific rate as determined under §412.73.

(B) The hospital-specific rate as determined under §412.75.

(ii) For discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, and for discharges occurring on or after October 1, 1997 and before October 1, 2006, 50 percent of the amount that the Federal rate determined under paragraph (c)(1) of this section is exceeded by the higher of the following:

(A) The hospital-specific rate as determined under §412.73.

(B) The hospital-specific rate as determined under §412.75.

(iii) For discharges occurring during cost reporting periods (or portions thereof) beginning on or after October 1, 2006, and before October 1, 2024, 75 percent of the amount that the Federal rate determined under paragraph (c)(1) of this section is exceeded by the highest of the following:

## § 412.109

## 42 CFR Ch. IV (10–1–23 Edition)

(A) The hospital-specific rate as determined under § 412.73.

(B) The hospital-specific rate as determined under § 412.75.

(C) The hospital-specific rate as determined under § 412.79.

(d) *Additional payments to hospitals experiencing a significant volume decrease.*

(1) CMS provides for a payment adjustment for a Medicare-dependent, small rural hospital for any cost reporting period during which the hospital experiences, due to circumstances as described in paragraph (d)(2) of this section, a more than 5 percent decrease in its total inpatient discharges as compared to its immediately preceding cost reporting period. If either the cost reporting period in question or the immediately preceding cost reporting period is other than a 12-month cost reporting period, the MAC must convert the discharges to a monthly figure and multiply this figure by 12 to estimate the total number of discharges for a 12-month cost reporting period.

(2) To qualify for a payment adjustment on the basis of a decrease in discharges, a Medicare-dependent, small rural hospital must submit its request no later than 180 days after the date on the MAC's Notice of Amount of Program Reimbursement and it must—

(i) Submit to the MAC documentation demonstrating the size of the decrease in discharges and the resulting effect on per discharge costs; and

(ii) Show that the decrease is due to circumstances beyond the hospital's control.

(3) The MAC determines a lump sum adjustment amount in accordance with the methodology set forth in § 412.92(e)(3).

(i) In determining the adjustment amount, the MAC considers—

(A) The individual hospital's needs and circumstances, including the reasonable cost of maintaining necessary core staff and services in view of minimum staffing requirements imposed by State agencies;

(B) The hospital's fixed (and semi-fixed) costs, other than those costs paid on a reasonable cost basis under part 413 of this chapter; and

(C) The length of time the hospital has experienced a decrease in utilization.

(ii) The MAC makes its determination within 180 days from the date it receives the hospital's request and all other necessary information.

(iii) The MAC determination is subject to review under subpart R of part 405 of this chapter. The time required by the MAC to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for that review.

[55 FR 15175, Apr. 20, 1990; 55 FR 32088, Aug. 7, 1990]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 412.108, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

### § 412.109 Special treatment: Essential access community hospitals (EACHs).

(a) *General rule.* For payment purposes, CMS treats as a sole community hospital any hospital that is located in a rural area as described in paragraph (b) of this section and that CMS designated as an EACH under section 1820(i)(1) of the Act as in effect on September 30, 1997, for as long as the hospital continues to comply with the terms, conditions, and limitations that were applicable at the time CMS designated the hospital as an EACH. The payment methodology for sole community hospitals is set forth at § 412.92(d).

(b) *Location in a rural area.* For purposes of this section, a hospital is located in a rural area if it—

(1) Is located outside any area that is a Metropolitan Statistical Area as defined by the Office of Management and Budget or that has been recognized as urban under § 412.62;

(2) Is not deemed to be located in an urban area under subpart D of this part.

(3) Is not classified as an urban hospital for purposes of the standardized payment amount by CMS or the Medicare Geographic Classification Review Board; or

(4) Is not located in a rural county that has been redesignated to an adjacent urban area under § 412.232.

(c) *Adjustment to the hospital-specific rate for rural EACH's experiencing increased costs—*(1) *General rule.* CMS increases the applicable hospital-specific

rate of an EACH that it treats as a sole community hospital if, during a cost reporting period, the hospital experiences an increase in its Medicare inpatient operating costs per discharge that is directly attributable to activities related to its membership in a rural health network.

(2) *Request and documentation.* In order for a hospital to qualify for an increase in its hospital-specific rate, it must meet the following criteria:

(i) The hospital must submit its request to its intermediary no later than 180 days after the date on the intermediary's notice of program reimbursement.

(ii) The request must include documentation specifically identifying the increased costs resulting from the hospital's participation in a rural health network and show that the increased costs during the cost reporting period will result in increased costs in subsequent cost reporting periods that are not already accounted for under the prospective payment system payment.

(iii) The hospital must show that the cost increases are incremental costs that would not have been incurred in the absence of the hospital's membership in a rural health network.

(iv) The hospital must show that the cost increases do not include amounts for start-up and one-time, nonrecurring costs attributable to its membership in a rural health network.

(3) *Intermediary recommendation.* The intermediary forwards the following material to CMS within 60 days of receipt from the hospital:

(i) The hospital's documentation and the intermediary's verification of that documentation.

(ii) The intermediary's analysis and recommendation of the request.

(iii) The hospital's Medicare cost report for the year in which the increase in costs occurred and the prior year.

(4) *CMS determination.* CMS determines, within 120 days of receiving all necessary information from the intermediary, whether an increase in the hospital-specific rate is warranted and, if it is, the amount of the increase. CMS grants an adjustment only if a hospital's Medicare inpatient operating costs per discharge exceed the hospital's hospital-specific rate. The ad-

justed hospital-specific rate cannot exceed the hospital's Medicare inpatient operating costs per discharge for the cost reporting period.

(d) *Termination of EACH designation.* If CMS determines that a hospital no longer complies with the terms, conditions, and limitations that were applicable at the time CMS designated the hospital as an EACH, CMS will terminate the EACH designation of the hospital, effective with discharges occurring on or after 30 days after the date of the determination.

(e) *Review of CMS determination.* A determination by CMS that a hospital's EACH designation should be terminated, is subject to review under part 405, subpart R of this chapter, including the time limits for filing requests for hearings as specified in §§ 405.1811(a) and 405.1841(a)(1) and (b) of this chapter.

[58 FR 30669, May 26, 1993, as amended at 59 FR 45398, Sept. 1, 1994; 60 FR 45848, Sept. 1, 1995; 61 FR 21972, May 13, 1996; 62 FR 46030, Aug. 29, 1997; 70 FR 47486, Aug. 12, 2005]

## Subpart H—Payments to Hospitals Under the Prospective Payment Systems

### §412.110 Total Medicare payment.

Under the prospective payment systems, Medicare's total payment for inpatient hospital services furnished to a Medicare beneficiary by a hospital will equal the sum of the payments listed in §§412.112 through 412.115, reduced by the amounts specified in §412.120.

[50 FR 12741, Mar. 29, 1985, as amended at 57 FR 39824, Sept. 1, 1992]

### §412.112 Payments determined on a per case basis.

A hospital is paid the following amounts on a per case basis:

(a) The appropriate prospective payment rate for inpatient operating costs for each discharge as determined in accordance with subparts D, E, and G of this part.

(b) Effective for cost reporting periods beginning on or after October 1, 1991, the appropriate prospective payment rate for capital-related costs for each discharge as determined in accordance with subpart M of this part.