

by the owner's investment, then to the intangible assets other than goodwill, and lastly to the goodwill. Repayments of the funds borrowed are applied first to the borrowing related to the tangible assets, then to the borrowing related to the intangible assets other than goodwill, and lastly to the borrowing related to the goodwill.

(3) When a provider borrows funds, but only some of the funds are necessary, repayments of the loan (principal and interest portions) are applied first to pay for the necessary portion of the loan. Only after all of the necessary portion of the loan (principal and interest) has been repaid are any repayments applied to the unnecessary portion of the loan. Repayments toward non-allowable borrowing pertaining to assets or activities not related to patient care are considered investments, and the provisions of paragraph (b)(2)(iii) of this section are applied.

(e) *Zero coupon bonds*—(1) *Interest on bonds issued on or after August 15, 1996.* For zero coupon bonds issued on or after August 15, 1996, interest expense incurred to provide funds for patient care-related costs is an allowable expense, and interest income earned for investment purposes is an allowable offset, in the cost reporting period in which the interest accrues.

(2) *Interest income offset.* Interest income from zero coupon bonds must be offset against allowable interest expense as prescribed in paragraph (b)(2) of this section and in §413.130(g)(2). If zero coupon bonds are purchased with the proceeds of an advanced refunding of debt, offset of the investment income is required under §413.153(b)(2)(iii), but the investment income is not prorated under §413.130(g)(2).

(3) *Use of effective interest method.* (i) Interest expense and interest income from zero coupon bonds that are reported as they accrue must be amortized using the effective interest method. This method recognizes the actual accrual of interest expense or income for each interest computation period (as specified by the bond instrument) throughout the life of the bond.

(ii) A constant effective yield rate is determined and applied to the book

value (outstanding loan balance including prior accrued interest) of the bond at the beginning of each period to determine the total interest for the period.

(iii) If the interest computation period involves portions of more than one cost reporting period, the amount of interest for that computation period shall be apportioned to each cost reporting period.

(iv) An example of the computation of interest using the effective interest method follows:

#### *Facts*

Life of zero coupon bond: 15 years.

Value at maturity: \$50,000.

Bondholder pays \$6,996 for the bond.

Annual interest rate is 13.5506% compounded semi-annually.

From the table below, interest for the first year would be \$980.11 (\$474.00 plus \$506.11).

Col 1 Six-month periods	Col 2 Book value beginning of period	Col. 3 Effective interest*	Col. 4 Book value end of period (columns 2 + 3)
1	\$6,996.00	\$474.00	\$7,470.00
2	7,470.00	506.11	7,976.11
3	7,976.11	540.40	8,516.51
4	8,516.51	577.02	9,093.53
29	43,855.94	2,971.37	46,827.31
30	46,827.31	3,172.69	50,000.00

\*Computed by multiplying the book value at the beginning of each period (Column 2) by 6.7753% (the annual interest rate of 13.5506%  $\div$  2 = 6.7753%).

[51 FR 34793, Sept. 30, 1986, as amended at 56 FR 43457, Aug. 30, 1991; 59 FR 45402, Sept. 1, 1994; 61 FR 37014, July 16, 1996; 61 FR 63748, 63479, Dec. 2, 1996; 65 FR 8662, Feb. 22, 2000]

#### **§413.157 Return on equity capital of proprietary providers.**

(a) *Definitions.* For purposes of this section—

*Proprietary provider* means a provider that is organized and operated with the expectation of earning a profit for its owners (as distinguished from a provider that is organized and operated on a nonprofit basis). Proprietary providers may be sole proprietorships, partnerships, or corporations. Effective for cost reporting periods beginning on or after July 6, 1987, the term applies only to proprietary hospitals and SNFs.

(b) *General rule.* A reasonable return on equity capital invested and used in

the provision of patient care is paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary providers.

(1) *Rate of return applicable to proprietary providers for cost reporting periods beginning before July 6, 1987.* Except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, the amount allowable on an annual basis, for cost reporting periods beginning before July 6, 1987, is determined by multiplying the provider's equity capital by a percentage equal to one and one-half times the average of the rates of interest on special issues of public debt obligations issued for purchase by the Medicare Part A Trust Fund for each of the months during the provider's reporting period or portion thereof covered under the program.

(2) *Rate of return for inpatient hospital services furnished by proprietary hospitals.* The rate used in determining the return for inpatient hospital services is a percentage of the average of the rates of interest described in paragraph (b)(1) of this section. The percentages applicable to inpatient hospital services are as follows:

(i) 150 percent for cost reporting periods beginning before April 20, 1983.

(ii) 100 percent for cost reporting periods beginning on or after April 20, 1983 and before October 1, 1986.

(iii) 75 percent for cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987.

(iv) 50 percent for cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988.

(v) 25 percent for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1989.

(vi) Zero percent for cost reporting periods beginning on or after October 1, 1989.

(3) *Rate of return related to proprietary SNFs.* (i) For cost reporting periods beginning on or after October 1, 1985, the rate used in determining the return for SNF services furnished before October 1, 1993, is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(ii) There is no allowance for return for SNF services furnished on or after October 1, 1993.

(4) *Rate of return related to outpatient hospital services.* (i) For cost reporting periods beginning on or after October 1, 1985, the rate used in determining the return for outpatient hospital services furnished before January 1, 1988 is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(ii) There is no allowance for return for outpatient hospital services furnished on or after January 1, 1988.

(5) *Rate of return for proprietary services of all nonhospital and non-SNF providers.* (i) For cost reporting periods beginning on or after October 1, 1985, but before July 6, 1987, the rate used in determining the return for services of all nonhospital and non-SNF providers is a percentage equal to the average of the rates of interest described in paragraph (b)(1) of this section.

(ii) For cost reporting periods beginning on or after July 6, 1987, there is no allowance for return on equity capital for nonhospital and non-SNF providers.

(c) *Application—(1) Computation of equity capital.* For purposes of computing the allowable return, the provider's equity capital means—

(i) The provider's investment in plant, property, and equipment related to patient care (net of depreciation) and funds deposited by a provider who leases plant, property, or equipment related to patient care and is required by the terms of the lease to deposit such funds (net of noncurrent debt related to such investment or deposited funds); and

(ii) Net working capital maintained for necessary and proper operation of patient care activities. However, debt representing loans from partners, stockholders, or related organizations on which interest payments would be allowable as costs but for the provisions of § 413.153(b)(3)(ii), is not subtracted in computing the amount of equity capital in order that the proceeds from such loans be treated as part of the provider's equity capital. In computing the amount of equity capital upon which a return is allowable, investment in facilities is recognized on the basis of the historical cost, or other basis, used for depreciation and other purposes under Part A of Medicare.

(2) *Acquisitions after July 1970.* With respect to a facility or any tangible assets of a facility acquired on or after August 1, 1970, the excess of the price paid for such facility or such tangible assets over the historical cost, as defined in §413.134(b), or the cost basis, as determined under §413.134(g) (whichever is appropriate), is not includable in equity capital, and loans made to finance such excess portion of the cost of such acquisitions (see §413.153(d)) are excluded in computing equity capital.

(3) *Acquisitions prior to August 1970.* With respect to a facility or any tangible assets of a facility acquired before August 1970, the excess of the price paid for such facility or assets over the fair market value of tangible assets at the time of purchase is includable in equity capital to the extent that it is reasonable except that the cumulative allowable return for such excess may not exceed 100 percent of such excess. For purposes of this section, the cumulative allowable return means the sum of the allowable rate of return on equity capital for all months starting from August 1, 1970. For example, if the allowable rates of return on equity capital for a provider are 9 percent for the first year (and such year started August 1, 1970), 8.5 percent for the second year, and 10.5 percent for the third year, the cumulative allowable return at the end of the third year would be 28 percent. After the cumulative allowable return equals 100 percent, the inclusion in equity capital of the excess is no longer allowable.

(4) *Computation of return on equity capital.* For purposes of computing the allowable return, the amount of equity capital is the average investment during the reporting period. The rate of return allowed, as derived from time to time based upon interest rates in accordance with this principle, is determined by CMS and communicated through contractors. Return on investment as an element of allowable costs is subject to apportionment in the same manner as other elements of allowable costs.

*Example of calculation of cumulative allowable return.* X purchased a provider on July 1, 1969, paying \$100,000 in excess of the fair market value of the assets acquired. Provider X files its cost report on a calendar-year basis.

The allowable rate of return on equity capital for August 1, 1970-December 31, 1970 (4.538 percent), is obtained by multiplying the allowable rate of return for the period ending December 31, 1970 (10.891) by  $\frac{5}{12}$  (a fraction of which the numerator is the number of months from August 1, 1970, to the end of the cost-reporting period and the denominator is the number of months in the cost-reporting period). The cumulative allowable return for Provider X for the period August 1, 1970-December 31, 1973, (32.367 percent) is computed as follows:

Cost reporting year ending	Rate of return on equity capital (percent)
Dec. 31, 1970 .....	4.538
Dec. 31, 1971 .....	8.969
Dec. 31, 1972 .....	8.891
Dec. 31, 1973 .....	9.969
Total .....	32.367

(The \$100,000 paid in excess of the fair market value of the assets acquired is included in equity capital until the sum of the allowable rate of return on equity capital equals 100 percent. Of course, no portion of the \$100,000 may be amortized as an allowable cost or is otherwise allowable for any program reimbursement purposes other than for determining the provider's equity capital.

[51 FR 34793, Sept. 30, 1986, as amended at 52 FR 21225, June 4, 1987; 52 FR 23398, June 19, 1987; 52 FR 32921, Sept. 1, 1987; 53 FR 12017, Apr. 12, 1988; 57 FR 39830, Sept. 1, 1992; 59 FR 26960, May 25, 1994]

## Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

SOURCE: 62 FR 43668, Aug. 15, 1997, as amended at 86 FR 73515, Dec. 27, 2021, unless otherwise noted.

### §413.170 Scope.

This subpart implements sections 1881(b)(2), (b)(4), (b)(7), and (b)(12) through (b)(14) of the Act by—

(a) Setting forth the principles and authorities under which CMS is authorized to establish a prospective payment system for outpatient maintenance dialysis services in or under the supervision of an ESRD facility that meets the conditions of coverage in part 494 of this chapter and as defined in §413.171(c).

(b) Providing procedures and criteria under which a pediatric ESRD facility