

**Subpart F—Limitations on Review**

**§ 419.60 Limitations on administrative and judicial review.**

There can be no administrative or judicial review under sections 1869 and 1878 of the Act or otherwise of the following:

- (a) The development of the APC system, including—
  - (1) Establishment of the groups and relative payment weights;
  - (2) Wage adjustment factors;
  - (3) Other adjustments; and
  - (4) Methods for controlling unnecessary increases in volume.
- (b) The calculation of base amounts described in section 1833(t)(3) of the Act.
- (c) Periodic adjustments described in section 1833(t)(9) of the Act.
- (d) The establishment of a separate conversion factor for hospitals described in section 1886(d)(1)(B)(v) of the Act.
- (e) The determination of the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable percentage under § 419.43(d) or the determination of insignificance of cost, the duration of the additional payments (consistent with subpart G of this part), the determination of initial and new categories under § 419.66, the portion of the Medicare hospital outpatient fee schedule amount associated with particular devices, drugs, or biologicals, and the application of any pro rata reduction under § 419.62(c).

[65 FR 18542, Apr. 7, 2000, as amended at 66 FR 55856, Nov. 2, 2001]

**Subpart G—Transitional Pass-through Payments**

SOURCE: 66 FR 55856, Nov. 2, 2001, unless otherwise noted.

**§ 419.62 Transitional pass-through payments: General rules.**

- (a) *General.* CMS provides for additional payments under §§ 419.64 and 419.66 for certain innovative medical devices, drugs, and biologicals.
- (b) *Budget neutrality.* CMS establishes the additional payments under §§ 419.64 and 419.66 in a budget neutral manner.

(c) *Uniform prospective reduction of pass-through payments.* (1) If CMS estimates before the beginning of a calendar year that the total amount of pass-through payments under §§ 419.64 and 419.66 for the year would exceed the applicable percentage (as described in paragraph (c)(2) of this section) of the total amount of Medicare payments under the outpatient prospective payment system. CMS will reduce, pro rata, the amount of each of the additional payments under §§ 419.64 and 419.66 for that year to ensure that the applicable percentage is not exceeded.

(2) The applicable percentages are as follows:

- (i) For a year before CY 2004, the applicable percentage is 2.5 percent.
- (ii) For 2004 and subsequent years, the applicable percentage is a percentage specified by CMS up to (but not to exceed) 2.0 percent.

(d) *CY 2002 incorporated amount.* For the portion of CY 2002 affected by these rules, CMS incorporated 75 percent of the estimated pass-through costs (before the incorporation and any pro rata reduction) for devices into the procedure APCs associated with these devices.

[66 FR 55856, 55865, Nov. 2, 2001; 67 FR 9568, Mar. 1, 2002]

EFFECTIVE DATE NOTE: At 66 FR 55865, Nov. 2, 2001, § 419.62 was amended by adding paragraph (d), effective Jan. 1, 2002. At 66 FR 67494, Dec. 31, 2001, the amendment was delayed indefinitely.

**§ 419.64 Transitional pass-through payments: Drugs and biologicals.**

(a) *Eligibility for pass-through payment.* CMS makes a transitional pass-through payment for the following drugs and biologicals that are furnished as part of an outpatient hospital service:

(1) *Orphan drugs.* A drug or biological that is used for a rare disease or condition and has been designated as an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act if payment for the drug or biological as an outpatient hospital service was being made on August 1, 2000.

(2) *Cancer therapy drugs and biologicals.* A drug or biological that is used in cancer therapy, including, but not limited to, a chemotherapeutic