

§ 403.256 Loss ratio supporting data.

(a) For purposes of requesting CMS certification under § 403.232, the insuring organization must submit the following loss ratio data to CMS for review—

(1) A statement of why the policy is to be considered, for purposes of the loss ratio standards, an individual or a group policy.

(2) The earliest age at which policyholders can purchase the policy.

(3) The general marketing method and the underwriting criteria used for the selection of applicants to whom coverage is offered.

(4) What policies are to be included under the one policy form, by the dates the policies are issued.

(5) The loss ratio calculation period.

(6) The scale of premiums for the loss ratio calculation period.

(7) The expected level of earned premiums in the loss ratio calculation period.

(8) The expected level of incurred claims in the loss ratio calculation period.

(9) A description of how the following assumptions were used in calculating the loss ratio.

(i) Morbidity.

(ii) Mortality.

(iii) Lapse.

(iv) Assumed increases in the Medicare deductible.

(v) Impact of inflation on reimbursement per service.

(vi) Interest.

(vii) Expected distribution, by age and sex, of persons who will purchase the policy in the coming year.

(viii) Expected impact on morbidity by policy duration of—

(A) The process used to select insureds from among those that apply for a policy; and

(B) Pre-existing condition clauses in the policy.

(b) For purposes of requesting continued CMS certification under § 403.239(a), the insuring organization must submit the following to CMS—

(1) A description of all changes in the loss ratio data, specified in paragraph (a) of this section, that occurred since CMS last reviewed the policy.

(2) The past loss ratio experience for the policy, including the experience of

all riders and endorsements issued under the policy. The loss ratio experience data must include earned premiums, incurred claims, and total policy reserves that the insuring organization calculates—

(i) For all years of issue combined; and

(ii) Separately for each calendar year since CMS first certified the policy.

§ 403.258 Statement of actuarial opinion.

(a) For purposes of certification requests submitted under § 403.232(b) and subsequent review as specified in § 403.239(a), *statement of actuarial opinion* means a signed declaration in which a qualified actuary states that the assumptions used in calculating the expected loss ratio are appropriate and reasonable, taking into account actual policy experience, if any, and reasonable expectations.

(b) *Qualified actuary* means—

(1) A member in good standing of the American Academy of Actuaries; or

(2) A person who has otherwise demonstrated his or her actuarial competence to the satisfaction of the Commissioner or Superintendent of Insurance of the domiciliary State of the insuring organization.

Subpart C—Recognition of State Reimbursement Control Systems

SOURCE: 51 FR 15492, Apr. 24, 1986, unless otherwise noted.

§ 403.300 Basis and purpose.

(a) *Basis*. This subpart implements section 1886(c) of the Act, which authorizes payment for Medicare inpatient hospital services in accordance with a State's reimbursement control system rather than under the Medicare reimbursement principles as described in CMS's regulations and instructions.

(b) *Purpose*. Contained in this subpart are—

(1) The basic requirements that a State reimbursement control system must meet in order to be approved by CMS;

(2) A description of CMS's review and evaluation procedures; and

(3) The conditions that apply if the system is approved.

§ 403.302 Definitions.

For purposes of this subpart—

Chief executive officer of a State means the Governor of the State or the Governor's designee.

Existing demonstration project refers to demonstration projects approved by CMS under the authority of section 402(a) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1) or section 222(a) of the Social Security Amendments of 1972 (42 U.S.C. 1395b–1 (note)) and in effect on April 20, 1983 (the date of the enactment of Pub. L. 98–21 (Social Security Amendments of 1983)).

Federal hospital means a hospital that is administered by, or that is under exclusive contract with, the Department of Defense, the Veterans Administration, or the Indian Health Service.

State system or *system* refers to a State reimbursement control system that is approved by CMS under the authority of section 1886(c) of the Act and that satisfies the requirements described in this subpart.

§ 403.304 Minimum requirements for State systems—discretionary approval.

(a) *Discretionary approval by CMS.* CMS may approve Medicare payments under a State system, if CMS determines that the system meets the requirements in paragraphs (b) and (c) of this section and, if applicable paragraph (d) of this section.

(b) *Requirements for State system.* (1) An application for approval of the system must be submitted to CMS by the Chief Executive Officer of the State.

(2) The State system must apply to substantially all non-Federal acute care hospitals in the State.

(3) All hospitals covered by the system must have and maintain a utilization and quality control review agreement with a Quality Improvement Organization, as required under section 1866(a)(1)(F) of the Act and § 466.78(a) of this chapter.

(4) Federal hospitals must be excluded from the State system.

(5) Nonacute care or specialty hospital (such as rehabilitation, psychiatric, or children's hospitals) may, at the option of the State, be excluded from the State system.

(6) The State system must apply to at least 75 percent of all revenues or expenses—

(i) For inpatient hospital services in the State; and

(ii) For inpatient hospital services under the State's Medicaid plan.

(7) Under the system, HMOs and competitive medical plans (CMPs), as defined by section 1876(b) of the Act and part 417 of this chapter, must be allowed to negotiate payment rates with hospitals.

(8) The system must limit hospital charges for Medicare beneficiaries to deductibles, coinsurance or non-covered services.

(9) Unless a waiver is granted by CMS under § 489.23 of this chapter, the system must prohibit payment, as required under section 1862(a)(14) of the Act and § 405.310(m) of this chapter, for nonphysician services provided to hospital inpatients under Part B of Medicare.

(10) The system must require hospitals to submit Medicare cost reports or approved reports in lieu of Medicare cost reports as required.

(11) The system must require—

(i) Preparation, collection, or retention by the State of reports (such as financial, administrative, or statistical reports) that may be necessary, as determined by CMS, to review and monitor the State's assurances; and

(ii) Submission of the reports to CMS upon request.

(12) The system must provide hospitals an opportunity to appeal errors that they believe have been made in the determination of their payment rates. The system, if it is prospective may not permit providers to file administrative appeals that would result in a retroactive revision of prospectively determined payment rates.

(c) *Satisfactory assurances.* The State must provide to CMS satisfactory assurance as to the following:

(1) The system provides for equitable treatment of hospital patients and hospital employees.

(2) The system provides for equitable treatment of all entities that pay hospitals for inpatient hospital services, including Federal and State programs. Under the requirement, the following conditions must be met:

(i) Both the Medicare and Medicaid programs must participate under the system.

(ii) The State must assure equitable and uniform treatment under the system of third-party payors of inpatient hospital services in terms of opportunity. Equitable opportunity must include, but need not be limited to, participation in the system and availability of discounts. Criteria under which discounts are made available must be equitably and uniformly applied to all payors, except for discounts negotiated by HMOs and CMPs. Discounts available to HMOs and CMPs as result of their statutory right to negotiate payment rates independently of a State system, as described in paragraph (b)(7) of this section, need not be available to other payors.

(iii) The State must assure that all third-party payors that participate under the system share in the system's risks and benefits.

(3) The amount of Medicare payments made under the system over 36-month periods may not exceed the amount of Medicare payment that would otherwise have been made under the Medicare principles of reimbursement for Medicare items and services had the State system not been in effect. States must submit the assurance and supporting data as required by § 403.320 to document that the payment limit is not exceeded. States that have an existing Medicare demonstration project in effect on April 20, 1983, and that have requested approval of a State system under section 1886(c)(4) of the Act, may elect to have the effectiveness of the State system under this paragraph judged on the basis of the State system's rate of increase or inflation in Medicare inpatient hospital payments as compared to the national rate of increase or inflation for such payments during the three cost reporting periods of the hospitals in the State beginning on or after October 1, 1983.

(d) *Additional cost-effectiveness assurance.* If the assurances and supporting data required under paragraph (c)(3) of this section are insufficient to provide assurance satisfactory to CMS regarding the cost-effectiveness of a State system, the State may additionally submit one of the following assurances

in order to meet the cost-effectiveness test:

(1) *State responsibility for excess payments.* The State must agree that each month Medicare intermediaries will disburse to the State's hospital Federal funds that in the aggregate equal no more than would have been disbursed in the absence of the State system. Any additional funds necessary to pay hospitals for Medicare services required by the State system will be paid to the intermediaries by the State. These additional amounts will be refunded to the State by the intermediaries to the extent that, in subsequent months, the State system requires a smaller aggregate payment for Medicare services than would have been paid in the absence of the State system.

(2) *Limitations on payments.* (i) The State must agree that if its projections exceed what Medicare would pay in any particular period, the State and CMS will establish and agreed upon payment schedule that will limit payments under the State system based on a predetermined percentage relationship between projected State payments and what payments would have been under Medicare.

(ii) If deviation from the predetermined relationship described in paragraph (d)(2)(i) of this section occurs, the State must further agree that—

(A) Medicare payments would be capped automatically at payment levels based on the rates used for the Medicare prospective payment system and the State would be required to pay the difference to individual hospitals in its system; or

(B) The State may provide by legislation or legally binding regulations that any reduced payments to hospitals under the system that result from this cost-effectiveness assurance will constitute full and final payment for hospital services furnished to Medicare beneficiaries for the period covered by these reduced payments.

§ 403.306 Additional requirements for State systems—mandatory approval.

(a) *General policy—(1) Mandatory approval.* HFCA will approve an application for Medicare reimbursement under

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a State system if the system meets all of the requirements of § 403.304 and of paragraph (b) of this section.

(2) *Exception.* CMS may approve an application if the State system meets all of the requirements of § 403.304 but only some of the requirements of paragraph (b) of this section.

(b) *Additional requirements*—(1) *Operation of system.* The system must—

(i) Be operated directly by the State or by entity designated under State law;

(ii) Provide for payments to hospitals using a methodology under which—

(A) Prospectively determined payment rates are established; and

(B) Exceptions, adjustments, and methods for changes in methodology are set forth;

(iii) Provide that a change by the State in the system that has the effect of materially changing payments to hospitals can take effect only upon 60 days notice to CMS and to the hospitals likely to be materially affected by the change and upon CMS's approval of the change.

(2) *Satisfactory assurances*—(i) *Admissions practice.* The State must assure that the operation of the system will not result in any change in hospital admission practices that result in—

(A) A significant reduction in the proportion of patients receiving hospital services covered under the system who have no third-party coverage and who are unable to pay for hospital services;

(B) A significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is less, or is likely to be less, than the anticipated charges for or cost of the services;

(C) A refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital; or

(D) A refusal to provide emergency services to any person who is in need of emergency services, if the hospital provides the services.

(ii) *Consultation with local government officials.* The State must provide documentation that it has consulted with local government officials concerning

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the impact of the system on publicly owned or operated hospitals.

§ 403.308 State systems under demonstration projects—mandatory approval.

CMS will approve an application from a State for a State system if—

(a) The system was in effect prior to April 20, 1983 under an existing demonstration project; and

(b) The minimum requirements and assurances for approval of a State system are met under § 403.304 (b)(1)–(10) and § 403.304(c), and, if appropriate § 403.304(d).

§ 403.310 Reduction in payments.

(a) *General rule.* If CMS determines that the satisfactory assurances required of a State under § 403.304(c) and, if applicable, § 403.304(d) have not been met, or will not be met, with respect to any 36-month period, CMS will reduce Medicare payments to individual hospitals being reimbursed under the State's system or, if applicable, under the Medicare payment system, in an amount equal to the amount by which the Medicare payments under the system exceed the amount of Medicare payments to such hospitals that otherwise would have been made not using the State system. The amount of the recoupment will include, when appropriate, interest charges computed in accordance with § 405.378 of this chapter.

(b) *Recoupment procedures.* The amount of the overpayment will be recouped on a proportionate basis from each of those hospitals that received payments under the State system that exceeded the payments they would have received under the Medicare payment system. Each hospital's share of the aggregate excess payment will be determined on the basis of a comparison of the hospital's proportionate share of the aggregate payment received under the State system that is in excess of what the aggregate payment would have been under the Medicare payment system. Recoupments may be accomplished by a hospital's direct payment to the Medicare program or by offsets to future payments made to the hospital.

(c) *Alternative recoupment procedures.* As an alternative to the recoupment procedures described in paragraph (b) of this section and subject to CMS's acceptance, the State may provide, by legislation or legally binding regulations, procedures for the recoupment of the amount of payments that exceed the amount of payments that otherwise would have been paid by Medicare if the State system had not been in effect.

(d) *Rule for existing Medicare demonstration projects.* In cases of existing Medicare demonstration projects where the expenditure test is to be applied by a rate of increase factor, the amount of the excess payment will be determined, for the three hospital cost reporting periods beginning before October 1, 1986, by a comparison of the State system's rate of increase to the national rate of increase. Recoupment of excessive payments will be assessed and recouped as described in this section.

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§ 403.312 Submittal of application.

The Chief Executive Officer of the State is responsible for—

(a) Submittal of the application to CMS for approval; and

(b) Supplying the assurances and necessary documentation as required under §§ 403.304 through 403.308.

§ 403.314 Evaluation of State systems.

CMS will evaluate all State applications for approval of State systems and notify the State of its determination within 60 days.

§ 403.316 Reconsideration of certain denied applications.

(a) *Request for reconsideration.* If CMS denies an application for a State system, the State may request that CMS reconsider the denial if the State believes that its system meets all of the requirements for mandatory approval under §§ 403.304 and 403.306 or, in the case of a State with a system operating under an existing demonstration project, the applicable requirements of §§ 403.304 and 403.308.

(b) *Time limit.* (1) The State must submit its request for reconsideration

within 60 days after the date of CMS's notice that the application was denied.

(2) CMS will notify the State of the results of its reconsideration within 60 days after it receives the request for reconsideration.

§ 403.318 Approval of State systems.

(a) *Approval agreement.* If CMS approves a State system, a written agreement will be executed between CMS and the Chief Executive Officer of the State. The agreement must incorporate any terms of the State's application for approval of the system as agreed to by the parties and, as a minimum, must contain provisions that require the following:

(1) The system is operated directly by the State or an entity designated by State law.

(2) For purposes of the Medicare program, the State's system applies only to Medicare payments for inpatient, and if applicable, outpatient hospital services.

(3) The system conforms to applicable Medicare law and regulations other than those relating to the amount of reimbursement for inpatient hospital services, or for inpatient and outpatient services, whichever the State system covers. Applicable regulations include, for example, those describing Medicare benefits and entitlement requirements for program beneficiaries, as explained in parts 406 and 409 of this chapter; the requirements at part 405, subpart J of this chapter specifying conditions of participation for hospitals; the requirements at part 405, subparts A, G, and S of this chapter on Medicare program administration; and all applicable fraud and abuse regulations contained in titles 42 and 45 of the CFR.

(4) The State must obtain CMS's approval of the State's reporting forms and of provider cost reporting forms or other forms that have not been approved by CMS but that are necessary for the collection of required information.

(b) *Effective date.* An approved State system may not be effective earlier than the date of the approval agreement, which may not be retroactive.

§ 403.320 CMS review and monitoring of State systems.

(a) *General rule.* The State must submit an assurance and detailed and quantitative studies of provider cost and financial data and projections to support the effectiveness of its system, as required by paragraphs (b) and (c) of this section.

(b) *Required information.* (1) Under § 403.304(c)(3) an assurance is required that the system will not result in greater payments over a 36-month period than would have otherwise been made under Medicare not using such system. If a State that has an existing demonstration project in effect on April 20, 1983 elects under § 403.304(c)(3) to have the effectiveness of its system judged on the basis of a rate of increase factor, the State must submit an assurance that its rate of increase or inflation in inpatient hospital payments does not exceed, for that portion of the 36-month period that is subject to this test, the national rate of increase or inflation in Medicare inpatient hospital payments. The election of the rate of increase test applies only to the three cost reporting periods beginning on or after October 1, 1983. At the end of these cost reporting periods, the State must assure, beginning with the first month after the expiration of the third cost reporting period beginning after October 1, 1983, that payments under its system will not exceed over the remainder of the 36-month period what Medicare payments would have been.

(2) Estimates and data are required to support the State's assurance, required under § 403.304(c)(3), that expenditures under the State system will not exceed what Medicare would have paid over a 36-month period. The estimates and projections of what Medicare would have otherwise paid must take into account all the Medicare reimbursement principles in effect at the time and, for any period in which payments either exceed or are less than Medicare levels, the values of interest the Medicare Trust Fund earned, or would have earned, on these amounts. Upon application for approval, the State must submit projections for each hospital for the first 12-month period covered by the assurance, in both the

aggregate and on a per discharge basis, of Medicare inpatient expenditures under Medicare principles of reimbursement and parallel projections of Medicare inpatient expenditures under the State's system and the resulting cost or savings to Medicare. The State must also submit separate statewide projections for each year of the 36-month period, in both the aggregate and on a weighted average discharge basis, of inpatient expenditures under the State system and under the Medicare principles of reimbursement.

(3) The projection submitted under paragraph (b)(2) of this section must include a detailed description of the methodology and assumptions used to derive the expenditure amounts under both systems. In instances where the assumptions are different under the projections cited in paragraph (b)(2) of this section, the State must provide a detailed explanation of the reasons for the differences. At a minimum, the following separate data and assumptions are to be included in the projections for the Medicare principles and for the State's system.

(i) The State system base year and the Medicare allowable and reimbursable cost of each hospital that the State used to develop the projections, including the amount of estimated pass through costs.

(ii) The categories of costs that are included in the State system and are reimbursed differently under the State system than under the Medicare system.

(iii) The number of Medicare and total base year discharges and admissions for each hospital.

(iv) The rate of change factor (and the method of application of this factor) used to project the base year costs over the 36-month period to which the assurance would apply.

(v) Any allowance for anticipated growth in the amount of services from the base year (if applicable, the allowance must be presented in separate estimates for population increases or for increases in rates of admissions or both).

(vi) Any adjustment in which the State is permitted by CMS to take into account previous reductions in the Medicare payment amounts that were

the result of the effectiveness of the State's system even though Medicare was not a part of that system.

(vii) Appropriate recognition and projection of the time value of trust fund expenditures for the period the State system expenditures were either less than or exceeded the Medicare system payments.

(viii) States applying under a rate of increase effectiveness test under § 403.304(c)(3) must also submit data projecting the parallel rates of increase during the requisite period.

(4) The projections must include both the aggregate payments and the payments per discharge for the individual hospitals and for the State as a whole.

(5) On a case-by-case basis. CMS may require additional data and documentation as needed to complete its review and monitoring.

(6) For existing Medicare demonstration projects in effect on April 20, 1983, the assurance and data as required by paragraphs (a) and (b) of this section, if appropriate, may be based on aggregate payments or payments per inpatient admission or discharge. CMS will judge the effectiveness of these systems on the basis of the rate of increase or inflation in Medicare inpatient hospital payments compared to the national rate of increase or inflation for such payments during the State's hospitals' three cost reporting periods beginning on or after October 1, 1983. The data submitted by the State for the period subject to the rate of increase test must include the rate of increase projection for that particular period of time. For the subsequent period of time, the State must assure that payments under its system will not exceed what Medicare payments would have been, as described in § 403.304(c)(3).

(7) If the amount of Medicare payments under the State system exceeds what would have been paid under the Medicare reimbursement principles in any given year, the State must also submit quantitative evidence that the system will result in expenditures that do not exceed what Medicare expenditures would have been over the 36 month period beginning with the first month that the State system is operating. For a State that has an existing demonstration project in effect on

April 20, 1983, and that elects under § 403.304(c)(3) to have a rate of increase test apply, if the State's rate of increase or inflation exceeds the national rate of increase or inflation in a given year, the State must submit quantitative evidence that, over 36 months, its payments will not exceed the national rate of increase or inflation. Furthermore, if payments under the State's system must be compared to actual Medicare expenditures, at the end of the third cost reporting period, as described in paragraph (b)(1) of this section, and payments under the State's system exceed what Medicare would have paid in a given year, the State must submit quantitative evidence that, over 36 months, payments under its system will not exceed what Medicare would have paid.

(c) *Review of assurances regarding expenditures.* CMS will review the State's assurances and data submitted under this section, as a prerequisite to the approval of the State's system. CMS will compare the State's projections of payment amounts to CMS data in order to determine if the State's assurance is reasonable and fully supportable. If the CMS data indicate that the State's system would result in payment amounts that would be more than that which would have been paid under the Medicare principles, the State's assurances would not be acceptable. For States applying in accordance with § 403.308, if CMS data indicate that the State's system would result in a rate of increase or inflation that would be more than the national rate of increase or inflation, the State's assurances would not be acceptable.

(d) *Medicaid upper limit.* In accordance with § 447.253 of this chapter, the State system may not result in aggregate payments for Medicaid inpatient hospital services that would exceed the amount that would have otherwise have been paid under the Medicare principles as applied through the State system.

(e) *Monitoring of Medicare expenditures.* CMS will monitor on a quarterly basis expenditures under the State's system as compared to what Medicare expenditures would have been if the system had not been in effect. If CMS

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determines at any time that the payments made under the State's system exceed the States' projections, as established by the satisfactory assurances required under § 403.304(c) and, if appropriate, the predetermined percentage relationship of the payments as required under § 403.304(d). CMS will—

(1) Conclude that payments under the State system over a 36-month period will exceed what Medicare would have paid;

(2) Terminate the waiver; and

(3) Recoup overpayments to the affected hospitals in accordance with the procedures described in § 403.310.

§ 403.321 State systems for hospital outpatient services.

CMS may approve a State's application for approval of an outpatient system if the following conditions are met:

(a) The State's inpatient system is approved.

(b) The State's outpatient application meets the requirements and assurances for an inpatient system described in §§ 403.304 (b) and (c), and 403.306 (b)(1) and (b)(2)(ii).

(c) The State submits a separate application that provides separate assurances and estimates and data in further support of its assurance submitted under paragraph (b)(1) of § 403.320, as follows:

(1) Upon application for approval, the State must submit estimates and data that include, but are not limited to, projections for the first 12-month period covered by the assurance for each hospital, in both the aggregate and on an average cost per service and payment basis, of Medicare outpatient expenditures under Medicare principles of reimbursement; parallel projections of Medicare outpatient expenditures under the State system; and the resulting cost or savings to Medicare independent of the State system for hospital inpatient services.

(2) The State must submit separate statewide projections for each year of the 36-month period of the aggregate

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outpatient expenditures for each system. The projections submitted under this paragraph must—

(i) Comply with the requirements of paragraphs (b) (3) and (5) of § 403.320 regarding a detailed description of the methodology used to derive the expenditure amounts;

(ii) Include the data and assumptions set forth in paragraphs (b)(3) (i), (ii), (iii), (iv), and (v) of § 403.320; and

(iii) Include any assumption the State has adopted for establishing the number of Medicare and total base year outpatient services for each hospital.

(3) The State must provide a detailed explanation of the reasons for any difference between the data or assumptions used for the separate projections.

§ 403.322 Termination of agreements for Medicare recognition of State systems.

(a) *Termination of agreements.* (1) CMS may terminate any approved agreement if it finds, after the procedures described in this paragraph are followed that the State system does not satisfactorily meet the requirements of section 1886(c) of the Act or the regulations in this subpart. A termination must be effective on the last day of a calendar quarter.

(2) CMS will give the State reasonable notice of the proposed termination of an agreement and of the reasons for the termination at least 90 days before the effective date of the termination.

(3) CMS will give the State the opportunity to present evidence to refute the finding.

(4) CMS will issue a final notice of termination upon a final review and determination on the State's evidence.

(b) *Termination by State.* A State may voluntarily terminate a State system by giving CMS notice of its intent to terminate. A termination must be effective on the last day of a calendar quarter. The State must notify CMS of its intent to terminate at least 90 days before the effective date of the termination.

Subparts D—F [Reserved]