

be otherwise furnished even if the beneficiary were not enrolled in a clinical study.

[60 FR 48423, Sept. 19, 1995, as amended at 78 FR 74809, Dec. 10, 2013; 86 FR 3009, Jan. 14, 2021; 86 FR 62958, Nov. 15, 2021]

§ 405.203 FDA categorization of investigational devices.

(a) The FDA assigns a device with an FDA-approved IDE to one of two categories:

(1) Category A (Experimental) devices.

(2) Category B (Nonexperimental/investigational) devices.

(b) The FDA notifies CMS, when it notifies the sponsor, that the device is categorized by FDA as Category A (Experimental) or Category B (Nonexperimental).

(c) CMS uses the categorization of the device as a factor in making Medicare coverage decisions.

[60 FR 48423, Sept. 19, 1995, as amended at 78 FR 74809, Dec. 10, 2013]

§ 405.205 Coverage of a Category B (Nonexperimental/investigational) device.

(a) For any device that meets the requirements of the exception at § 411.15(o) of this chapter, the following procedures apply:

(1) The FDA notifies CMS, when it notifies the sponsor, that the device is categorized by FDA as Category B (Nonexperimental/investigational).

(2) CMS uses the categorization of the device as a factor in making Medicare coverage decisions.

(b) If the FDA becomes aware that a categorized device no longer meets the requirements of the exception at § 411.15(o) of this chapter, the FDA notifies the sponsor and CMS and the procedures described in paragraph (a)(2) of this section apply.

[60 FR 48423, Sept. 19, 1995, as amended at 78 FR 74809, Dec. 10, 2013]

§ 405.207 Services related to a non-covered device.

(a) *When payment is not made.* Medicare payment is not made for medical and hospital services that are related to the use of a device that is not covered because CMS determines the device is not “reasonable” and “nec-

essary” under section 1862(a)(1)(A) of the Act or because it is excluded from coverage for other reasons. These services include all services furnished in preparation for the use of a noncovered device, services furnished contemporaneously with and necessary to the use of a noncovered device, and services furnished as necessary after-care that are incident to recovery from the use of the device or from receiving related noncovered services.

(b) *When payment is made.* Medicare payment may be made for—

(1) Covered services to treat a condition or complication that arises due to the use of a noncovered device or a noncovered device-related service; or

(2) Routine care items and services related to Category A (Experimental) devices as defined in § 405.201(b), and furnished in conjunction with FDA-approved clinical studies that meet the coverage requirements in § 405.211.

(3) Routine care items and services related to Category B (Nonexperimental/investigational) devices as defined in § 405.201(b), and furnished in conjunction with FDA-approved clinical studies that meet the coverage requirements in § 405.211.

[60 FR 48423, Sept. 19, 1995, as amended at 69 FR 66420, Nov. 15, 2004; 78 FR 74809, Dec. 10, 2013]

§ 405.209 Payment for a Category B (Nonexperimental/investigational) device.

Payment under Medicare for a Category B (Nonexperimental/investigational) device is based on, and may not exceed, the amount that would have been paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA.

[78 FR 74809, Dec. 10, 2013]

§ 405.211 Coverage of items and services in FDA-approved IDE studies.

(a) *Coverage of routine care items and services for Category A (Experimental) devices.* Medicare covers routine care items and services furnished in an FDA-approved Category A (Experimental) IDE study if CMS (or its designated entity) determines that the Medicare coverage IDE study criteria in § 405.212 are met.