

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA-1089-P]

RIN 0938-AK15

Medicare Program; Payment for Clinical Psychology Training Programs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise our policy on Medicare payment for approved nursing and allied health education programs to permit payment for the costs incurred by a provider for the clinical training of students enrolled in a clinical psychology training program. Consistent with the Conference Agreement language in the Conference Report accompanying the Balanced Budget Act of 1997 (Public Law 105-33), these clinical training costs would be paid separately on a reasonable cost basis in accordance with sections 1861(v) and 1886(a)(4) of the Social Security Act.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. March 13, 2001.

ADDRESSES: Mail written comments (an original and three copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA 1089-P, P.O. Box 8010, Baltimore, MD 21244-1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5-14-03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Comments mailed to these addresses may be delayed and could be considered late.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter (410) 786-4487.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies and Electronic Access

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1089P. Comments received timely will be available for public

inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443-G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements, mail a copy of comments to: Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850. Attn: John Burke HCFA-1089-P; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer HCFA-1089-P.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512-1800 or by faxing to (202) 512-2250. The cost for each copy is \$8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

Medicare has historically paid providers for its share of the costs that providers incur in connection with

approved educational activities. The activities may be broken down into the following three general categories to which different payment policies apply:

- Approved graduate medical education (GME) programs in medicine, osteopathy, dentistry, and podiatry. Medicare makes direct and indirect medical education payments to hospitals operating these programs. Existing policy on direct GME payment is found at 42 CFR 413.86, and for indirect GME payment at 42 CFR 412.105.

- Approved nursing and allied health education programs operated by the provider. The costs of these programs are excluded from the definition of inpatient hospital operating costs and are not included in the calculation of payment rates under the Medicare hospital inpatient prospective payment system or in the calculation of the target amount subject to the rate-of-increase ceiling for hospitals and hospital units excluded from the hospital inpatient prospective payment system. These costs are separately identified and "passed through" (that is, paid separately on a reasonable cost basis).

- All other costs that can be categorized as educational programs and activities are considered to be part of normal operating costs and are covered on a per-case basis for hospitals subject to the hospital inpatient prospective payment system, or on a reasonable cost basis subject to the rate-of-increase limits for hospitals and hospital units excluded from the hospital inpatient prospective payment system.

This proposed rule describes how Medicare payments for the costs associated with approved nursing and allied health education programs are made, and sets forth proposed changes in payment policy for the costs incurred by a provider for the clinical training of students enrolled in a clinical psychology training program.

Under regulations at 42 CFR 413.85 ("Cost of approved nursing and allied health educational activities"), Medicare makes reasonable cost payment to hospitals for hospital-operated nursing and allied health education programs. In general, a hospital may receive reasonable cost payment if the provider directly incurs the training costs, controls the curriculum and the administration of the program, employs the teaching staff, and provides and controls both clinical training and classroom instruction (where applicable) of a nursing or allied health education program.

Elsewhere in this issue of the **Federal Register**, we published a final regulation that clarified the policy for payments for

approved nursing and allied health education activities to implement section 6205(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) and sections 4004(b)(1) and (2) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508).

Section 6205(b)(2) of Public Law 101-239 directed the Secretary to publish regulations clarifying the rules governing allowable costs of approved educational activities and when those costs are eligible for pass-through (that is, paid separately from other payments) under the hospital inpatient prospective payment system, including the relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be eligible for pass-through. Section 4004(b)(1) of Public Law 101-508 provides that, effective for cost reporting periods beginning on or after October 1, 1990, if certain conditions are met, the costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) for clinical training (as defined by the Secretary) conducted on the premises of the hospital under an approved nursing or allied health education program that is not operated by the hospital are treated as pass-through costs and paid on the basis of reasonable cost. Section 4004(b)(2) of Public Law 101-508 sets forth the conditions that a hospital must meet to receive payment on a reasonable cost basis under section 4004(b)(1).

While we were drafting the final rule relating to nursing and allied health education activities to implement the Congressional mandates under Public Laws 101-239 and 101-508, we received questions from representatives of various entities as to whether we would be revising our policies to address the language in the Conference Agreement in the Conference Report accompanying Public Law 105-33 that the " * * * Conferees also note that the Secretary reimburses for the training of certain allied health professionals, and urges the Secretary to include * * * psychologists under such authority." (H.R. Rep. No. 105-217, 105th Cong., 1st Sess., 822 (1997).) Many clinical psychology training programs currently do not meet the general criteria stated at § 413.85(f) of the regulations to be considered provider-operated programs because they do not operate both the classroom instruction and clinical training portions. We understand that in clinical psychology training programs, providers are operating only the clinical training portions of the programs.

II. Provisions of the Proposed Rule

We are proposing to amend § 413.85 to allow a provider to receive pass-through reasonable cost payment if it is operating the clinical training portion of a clinical psychology training program.

For purposes of determining whether a hospital operates the clinical training portion of a clinical psychology training program, we propose to use criteria that correspond to the generally applicable criteria for determining whether a hospital operates a program. Therefore, we are proposing at new § 413.85(g) that a provider must meet the following criteria in order to be considered the operator of the clinical training portion of a clinical psychology training program:

(1) Directly incur the clinical training costs.

(2) Have direct control of the clinical training curriculum.

(3) Control the administration of the clinical training portion, including collection of tuition of the clinical training portion (where applicable), control the maintenance of payroll records of teaching staff of the clinical training portion or students or both (where applicable), and be responsible for day-to-day clinical training operation. (A provider may contract with another entity to perform some administrative functions, but the provider must maintain control over all aspects of the contracted functions.)

(4) Employ the teaching staff of the clinical training portion.

We welcome public comment on these proposed criteria. If a provider meets all of these proposed criteria for operating the clinical training portion of a clinical psychology training program, as well as the other requirements for payment listed under § 413.85(d)(1)(i), we propose that the provider may receive pass-through reasonable cost payment for the net costs of the clinical training portion of the program.

We believe it is critical to expand existing policy to include payment for the hospital-based training of this allied health specialty because it plays an essential role in providing quality health care to Medicare beneficiaries. We believe it is important to pay for hospital-based clinical psychology training in order to:

- *Fulfill the Secretary's commitment to improve mental health services for Medicare beneficiaries.*

The Secretary has made a strong commitment to improve the treatment of mental health problems experienced by Medicare beneficiaries—most notably through the Surgeon General's Report,

"Mental Health: Report of the Surgeon General." U.S. Department of Health and Human Services, National Institutes of Health, National Institute of Mental Health, Substance Abuse and Mental Health Services Administration, Rockville, Maryland (1999). In making this commitment, the Secretary noted that depression, which affects about one in six people and is often higher among individuals in nursing homes, is a widely underrecognized and undertreated medical condition. We believe that providing funds to help train additional persons in the field of clinical psychology may greatly assist in both the detection and the adequate treatment of depression in this vulnerable group.

Psychologists are exceptionally well qualified to recognize symptoms of depression and provide early intervention services to address mental health problems. For example, unlike other groups of mental health providers, in some cases clinical psychologists have hospital admitting privileges, which could potentially increase the accessibility of hospital services to beneficiaries who may need such care.

- *Provide a more comprehensive approach to care.*

By helping to train more clinical psychologists, we will continue to move towards achieving our goal of providing a comprehensive, multi-disciplinary approach to treating Medicare beneficiaries. In addition, it is important that beneficiaries have access to care and treatment for both their physical and mental illness.

In addition, we note that allowing a provider to receive pass-through reasonable cost payment if it is operating the clinical training portion of a clinical psychology training program is also consistent with the Conference Report accompanying Public Law 105-33 cited earlier.

III. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more annually). We do not consider this

proposed rule as meeting the criteria as a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$5 million or less annually. For purposes of the RFA, all providers are treated as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Our actuarial estimates indicate that the minimal annual cost to the Medicare program associated with payment for the clinical training portion of clinical psychology training programs would be approximately \$30 million the first year after payments begin and may grow to \$50 million by the 5th year. Costs are expected to increase because we believe that Medicare's support through its education regulations will encourage hospitals to report more costs for clinical psychology training programs than are reported today. This estimate is based on assumptions as to how much Medicare could pay for additional educational programs and how quickly other providers with clinical training portions would begin seeking those payments.

The following chart shows projected costs to the Medicare program for the next 5 years:

Fiscal year	Medicare program costs*
2001	\$30
2002	40
2003	40
2004	40
2005	50

* In millions.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities and would not have a

significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in any one year expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. This proposed rule does not mandate any requirements for State, local, or tribal governments.

We have examined this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that this proposed rule will not impact on the rights, roles and responsibilities of the State, local or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

IV. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of an information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The proposed regulation at § 413.85(g)(2)(ii) contains an information collection and recordkeeping requirement that is subject to review by OMB under the Paperwork Reduction Act of 1995. Under this information collection requirement a provider would need to maintain documentation of a separate licensure if required by State law, or, if licensing is not required, accreditation by the recognized national professional organization, for the clinical psychology training program. We believe that this information is already maintained for those clinical psychology training programs and no additional time will be

required to satisfy this requirement. Therefore, the burden associated with this requirement is exempt from the PRA as defined in 5 CFR 1320.3(b)(2) and (b)(3).

Comments on the information collection and record-keeping requirement should be mailed to the following addresses:

Health Care Financing Administration,
Office of Information Services,
Security and Standards Group,
Division of HCFA Enterprise
Standards, Room N2-14-26, 7500
Security Boulevard, Baltimore,
Maryland 21244-1850. Attn: John
Burke HCFA-1089-P;

and
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Room 3001, New Executive
Office Building, Washington, DC
20503, Attn: Allison Herron Eydt,
HCFA Desk Officer HCFA 1089-P.

V. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble to that rule.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.85 is amended by:
- A. Revising paragraph (d)(1);
 - B. Revising the introductory text of paragraph (f)(1);
 - C. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively;

D. Adding new paragraph (g); and
E. Revising newly designated paragraph (h)(1) and the introductory text of newly designated paragraph (h)(2).

§ 413.85 Cost of approved nursing and allied health education activities.

* * * * *

(d) *General payment rules.* (1) Payment for a provider's net cost of nursing and allied health education activities is determined on a reasonable cost basis, subject to the following conditions and limitations:

(i) An approved educational activity must—

(A) Be recognized by a national approving body or State licensing authority as specified in paragraph (e) of this section;

(B) Meet the criteria specified in paragraph (f) of this section for identification as an operator of an approved education program; or the criteria specified in paragraph (g) of this section for identification as an operator of the clinical training portion of a clinical psychology training program.

(C) Enhance the quality of inpatient care at the provider.

(ii) The costs for certain nonprovider-operated activities or programs are reimbursed on a reasonable cost basis if the activities or programs meet the criteria specified in paragraph (h)(2) of this section.

(f) *Criteria for identifying programs operated by a provider.* (1) Except as

provided in paragraphs (f)(2) and (g) of this section, for cost reporting periods beginning on or after October 1, 1983, in order to be considered the operator of an approved nursing or allied health education program, a provider must meet all of the following requirements:

* * * * *

(g) *Criteria for identifying provider-operated clinical training portions of clinical psychology training programs.* Effective with cost reporting periods beginning on or after [FR: insert 60 days after date of publication of final regulation], in order to be considered the operator of the clinical training portion of a clinical psychology training program, a provider must meet all of the following requirements:

(1) Directly incur the clinical training costs.

(2) Have direct control of the clinical training curriculum.

(3) Control the administration of the clinical training portion, including collection of tuition of the clinical training portion (where applicable), control the maintenance of payroll records of teaching staff or students of the clinical training portion, or both (where applicable), and be responsible for day-to-day clinical training operation. (A provider may contract with another entity to perform some administrative functions, but the provider must maintain control over all aspects of the contracted functions.)

(4) Employ the teaching staff of the clinical training portion.

* * * * *

(h) *Payment for certain nonprovider-operated programs.* (1) *Payment rule.* Costs incurred by a provider, or by an educational institution that is related to the provider by common ownership or control (that is, a related organization as defined in § 413.17(b)), for the clinical training of students enrolled in an approved nursing or allied health education program that is not operated by the provider, are paid on a reasonable cost basis if the conditions specified in paragraph (h)(2) of this section are met.

(2) *Criteria for identification of approved nonprovider-operated education programs.* Payment for the incurred costs of educational activities identified in paragraph (h)(1) of this section will be made if the following conditions are met:

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 4, 2001.

Robert A. Berenson,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: January 4, 2001.

Donna E. Shalala,

Secretary.

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