

*Example 12. Contribution of replacement QSB stock to a partnership.* (i) On January 1, 2008, A, an individual, B, an individual, and X, a C corporation, form PRS, a partnership. A, B, and X each contribute \$250 to PRS and agree to share all partnership items equally. On February 1, 2008, PRS purchases QSB stock for \$750. PRS sells the QSB stock on November 3, 2008, for \$1,050. PRS realizes \$300 of gain from the sale of the QSB stock (none of which is treated as ordinary income) and allocates \$100 of gain to each of its partners. PRS informs the partners that it does not intend to make an election under section 1045 with respect to the sale of the QSB stock. Each partner's share of the amount realized from the sale of the QSB stock is \$350. On November 30, 2008, A, an eligible partner within the meaning of paragraph (g)(3) of this section, purchases replacement QSB stock for \$350 and makes a section 1045 election under paragraph (c)(1) of this section. Subsequently, A transfers the replacement QSB stock to ABC, a partnership, in exchange for an interest in ABC.

(ii) Because A purchased within 60 days of PRS's sale of the QSB stock, replacement QSB stock for a cost equal to A's share of the partnership's amount realized on the sale of the QSB stock, and because A made a valid election to apply section 1045 with respect to A's share of the gain from PRS's sale of the QSB stock, A does not recognize A's \$100 distributive share of the gain from PRS's sale of the QSB stock. Before the contribution of the replacement QSB stock to ABC, A's adjusted basis in the replacement QSB stock is \$250 (\$350 cost minus \$100 nonrecognition amount). A does not recognize gain upon the contribution of QSB stock to ABC under section 721(a). Upon the contribution of the replacement QSB stock to ABC, A's basis in the ABC partnership interest is \$250, and ABC's basis in the replacement QSB stock is \$250. However, the replacement QSB stock does not qualify as QSB stock in ABC's hands. Neither A nor ABC will be eligible to defer gain under section 1045 on a subsequent sale of the replacement QSB stock.

(j) *Effective date/applicability—In general.* This section applies to sales of QSB stock on or after August 14, 2007.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 3.** The authority citation for part 602 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101 paragraph (b) is amended by adding in numerical order, § 1.1045-1, to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * *	*
1.1045-1 .....	1545-1893
* * *	*

**Kevin M. Brown,**  
*Deputy Commissioner for Services and Enforcement.*  
 Approved: August 2, 2007.  
**Eric Solomon,**  
*Assistant Secretary of the Treasury (Tax Policy).*  
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**DEPARTMENT OF LABOR**  
**Mine Safety and Health Administration**  
**30 CFR Part 75**  
**RIN 1219-AB52**

**Sealing of Abandoned Areas**

**AGENCY:** Mine Safety and Health Administration, Labor.  
**ACTION:** Extension of comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is extending the comment period for the Emergency Temporary Standard (ETS) on sealing of abandoned areas of underground coal mines published on May 22, 2007 (72 FR 28796). This extension gives commenters additional time to review recently posted documents on MSHA's Web site and a recently published report from the National Institute for Occupational Safety and Health (NIOSH) entitled "Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines" (NIOSH Publication No. 2007-144, July 2007).

**DATES:** The comment period will close on September 17, 2007.

**ADDRESSES:** Comments must be clearly identified and may be submitted by any of the following methods:

(1) Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) Electronic mail: [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov). Include "RIN 1219-AB52" in the subject line of the message.

(3) Telefax: (202) 693-9441. Include "RIN 1219-AB52" in the subject.

(4) Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia, 22209-3939.

(5) Hand Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939. Sign in at the receptionist's desk on the 21st floor.

(6) Docket: Comments can be accessed electronically at <http://www.msha.gov> under the "Rules and Regs" link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a listserve that enables subscribers to receive e-mail notification when rulemaking documents are published in the **Federal Register**. To subscribe to the listserve, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Ms. Silvey can be reached at [Silvey.Patricia@dol.gov](mailto:Silvey.Patricia@dol.gov) (Internet E-mail), (202) 693-9440 (voice), or (202) 693-9441 (facsimile). This notice is available on the Internet at <http://www.msha.gov/REGSINFO.HTM>.

**SUPPLEMENTARY INFORMATION:** MSHA issued an Emergency Temporary Standard (ETS) on May 22, 2007 (72 FR 28796). On June 25, 2007, MSHA notified the public that the comment period for the ETS would close on August 17, 2007 (72 FR 34609). On August 3, 2007, the National Mining Association requested that the comment period be extended 30 days to allow additional time to comment on several new ETS related documents recently posted on MSHA's Web page, including a set of compliance assistance questions and answers posted on July 23, 2007; MSHA's Procedure Instruction Letter No. I07-V-04, Procedures for Inspection of Seals, issued on July 24, 2007, and posted on July 25, 2007; and the Seal Design Approval Information Template updated on August 2, 2007.

In addition, MSHA posted four new seal designs on August 2, 2007: Three 50 psi seal designs and one 120 psi seal design. Furthermore, NIOSH recently published a final report on "Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines." The report is available on the Internet at: <http://www.cdc.gov/niosh/mining/pubs/pdfs/2007-144.pdf>.

MSHA is extending the comment period to September 17, 2007. This

action allows commenters sufficient time to fully review the posted documents and submit comments. MSHA will accept written comments and other appropriate data from any interested party up to the close of the comment period on September 17, 2007.

Dated: August 9, 2007.

**John P. Pallasch,**

*Deputy Assistant Secretary for Mine Safety and Health.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

[DOD-2007-HA-0048]

RIN 0720-AB16

#### TRICARE; Outpatient Hospital Prospective Payment System (OPPS)

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule implements a prospective payment system for hospital outpatient services similar to that furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. The rule also recognizes applicable statutory requirements and changes arising from Medicare's continuing experience with this system including certain related provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The Department is publishing this rule as an interim final rule to implement existing statutory requirements for adoption of Medicare payment methods for institutional care. Interim final rule publication will ensure the expeditious implementation of a proven hospital OPPS, providing incentives for hospitals to furnish outpatient services in an efficient and effective manner. However, public comments are invited and will be considered for possible revisions to the final rule.

**DATES:** *Effective Dates:* September 13, 2007.

*Comments:* Written comments received at the address indicated below by October 15, 2007 will be accepted.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

#### FOR FURTHER INFORMATION CONTACT:

David E. Bennett, TRICARE Management Activity, Medical Benefits and Reimbursement Systems, telephone (303) 676-3494.

#### SUPPLEMENTARY INFORMATION:

##### I. Justification for Interim Final Rule (IFR) Making

In accordance with Title 5, Part I, Chapter 5, Subchapter II, § 553(b)(3)(B) of the Administrative Procedures Act, the following rationale is being provided for implementing TRICARE's OPPS under the IFR process.

In the National Defense Authorization Act for Fiscal Year 2002 (NDAA-02), Public Law 107-107 (December 28, 2001), several reforms were enacted relating to TRICARE coverage and payment methods for skilled nursing and home health services which were all implemented through interim final rule (IFR) making to ensure expeditious implementation of Congressionally mandated reimbursement systems. In addition to the requirement that TRICARE establish an integrated sub-acute care program consisting of skilled nursing facility and home health care services modeled after the Medicare program, Congress also—in section 707 of NDAA-02—changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods for institutional care “may be” determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods “shall be” determined to the extent practicable in accordance with Medicare payment rules. Section 707(c) required that the amendments made by this section shall take effect on the date that is 90 days after the date of the enactment of the Act.

In the supplementary sections of both the Sub-Acute Care Program interim and final rules (67 FR 40597, June 13, 2002, and 70 FR 61377—Supplementary Information, VIII. Payment Methods for Hospital Outpatient Services), the

public was informed of the Agency's intent to adopt and implement the Medicare Prospective Payment System to the extent practicable. However, because of complexities of the Medicare transition process and the lack of TRICARE cost report data comparable to Medicare's, it was not practicable for the Department to adopt Medicare OPPS for hospital outpatient services at that time.

It was recognized that adoption of the Medicare OPPS would require full commitment by the Agency to ensure expeditious implementation of the OPPS given the fact that Medicare's outpatient reimbursement system had been in effect since August 1, 2000. A formal OPPS work group was formed over 2½ years ago to finalize operational requirements and develop sophisticated software for processing and payment of hospital outpatient claims. Although the agency was committed to mirroring the basic Medicare reimbursement methodology as closely as possible (i.e., Medicare Ambulatory Payment Classification (APC) system, national APC payment rates, geographical wage adjustments, discounting, coding requirements, etc.), there were modifications that had to be done to the software grouping and pricing components to accommodate TRICARE's unique beneficiary and benefit structure. The continual updating of grouping and pricing software based on ongoing Medicare quarterly updates, along with TRICARE specific requirements, have been a challenge to both TRICARE and its Managed Care Support Contractors.

Based on the agency's requirement to implement OPPS as mandated under section 707 of NDAA-02 (i.e., the statutory change to 10 U.S.C. 1079(j)(2)) that TRICARE payment methods for institutional care shall be determined to the extent practicable in accordance with Medicare payment rules), and to maximize the administrative efficiencies and cost-savings of this new reimbursement system, TRICARE opted to go with the same interim final rule making process that it used in implementing the two previously mandated Medicare reimbursement systems (i.e., the TRICARE Home Health Agency and the Skilled Nursing Facility Prospective Payment System, which also statutorily mandated under the same NDAA as OPPS—which was section 707 of NDAA-02).

The fact that TRICARE will be following Medicare changes to the extent practicable (i.e., outpatient services provided in hospitals subject to Medicare OPPS as specified in 42 CFR § 413.65 and 42 CFR § 419.20 will be paid in accordance with the provisions