

“(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

“(ii) having a legislature which is not scheduled to meet in 1996 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1996. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.”

#### EVALUATION OF 1990 AMENDMENTS

Pub. L. 101-508, title IV, §4358(d), Nov. 5, 1990, 104 Stat. 1388-137, provided that: “The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section [amending this section and section 1320c-3 of this title] and shall report to Congress on such evaluation by not later than January 1, 1995.”

#### § 1395ss-1. Clarification

Any health insurance policy that provides reimbursement for expenses incurred for items and services for which payment may be made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] but which are not reimbursable by reason of the applicability of deductibles, coinsurance, copayments or other limitations imposed by a Medicare Advantage plan (including a Medicare Advantage private fee-for-service plan) under part C of such title [42 U.S.C. 1395w-21 et seq.] shall comply with the requirements of section 1882(o) of the such<sup>1</sup> Act (42 U.S.C. 1395ss(o)).

(Pub. L. 110-275, title I, §104(c), July 15, 2008, 122 Stat. 2502.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title XVIII of the Act is classified generally to this subchapter. Part C of title XVIII of the Act is classified to section 1395w-21 et seq. of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

##### CODIFICATION

Section was enacted as part of the Medicare Improvements for Patients and Providers Act of 2008, and not as part of the Social Security Act which comprises this chapter.

#### § 1395tt. Hospital providers of extended care services

##### (a) Hospital facility agreements; reasonable costs of services

(1) Any hospital which has an agreement under section 1395cc of this title may (subject to subsection (b)) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provision of this subchapter, payment to any hospital (other

than a critical access hospital) for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under subsections (a) through (d) of section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(3) Notwithstanding any other provision of this subchapter, a critical access hospital shall be paid for covered skilled nursing facility services furnished under an agreement entered into under this section on the basis of equal to 101 percent of the reasonable costs of such services (as determined under section 1395x(v) of this title).

##### (b) Eligible facilities

The Secretary may not enter into an agreement under this section with any hospital unless, except as provided under subsection (g), the hospital is located in a rural area and has less than 100 beds.

##### (c) Terms and conditions of facility agreements

An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1395cc of this title and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1395cc of this title; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1395cc of this title. A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

<sup>1</sup> So in original.

**(d) Post-hospital extended care services**

Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1395cc of this title; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this subchapter (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1395cc of this title.

**(e) Reimbursement for routine hospital services**

During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including this subchapter, subchapter XIX, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine this subchapter reimbursement for routine hospital services.

**(f) Conditions applicable to skilled nursing facilities**

A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1395i-3 of this title. Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

**(g) Agreements on demonstration basis**

The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1), if the hospital otherwise meets the requirements of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1883, as added Pub. L. 96-499, title IX, § 904(a)(1), Dec. 5, 1980, 94 Stat. 2615; amended Pub. L. 100-203, title IV, §§ 4005(b)(1), (2), 4201(d)(3), Dec. 22, 1987, 101 Stat. 1330-48, as amended Pub. L. 100-360, title IV, § 411(l)(1)(C), July 1, 1988, as added Pub. L. 100-485, title VI, § 608(d)(27)(B), Oct. 13, 1988, 102 Stat. 2422; Pub. L. 100-360, title I, § 104(d)(6), title IV, § 411(b)(4)(D), July 1, 1988, 102 Stat. 689, 770; Pub. L. 101-234, title I, § 101(a), Dec. 13, 1989, 103 Stat. 1979; Pub. L. 101-508, title IV, § 4008(j)(1), Nov. 5, 1990, 104 Stat. 1388-51; Pub. L. 105-33, title

IV, § 4432(b)(5)(G), Aug. 5, 1997, 111 Stat. 422; Pub. L. 106-113, div. B, § 1000(a)(6) [title IV, §§ 403(f), 408(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-371, 1501A-375; Pub. L. 106-554, § 1(a)(6) [title II, § 203(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-482; Pub. L. 108-173, title IV, § 405(a)(1), Dec. 8, 2003, 117 Stat. 2266.)

**Editorial Notes****AMENDMENTS**

2003—Subsec. (a)(3). Pub. L. 108-173 inserted “equal to 101 percent of” before “the reasonable costs”.

2000—Subsec. (a)(2)(A). Pub. L. 106-554, § 1(a)(6) [title II, § 203(b)(1)], inserted “(other than a critical access hospital)” after “any hospital”.

Subsec. (a)(3). Pub. L. 106-554, § 1(a)(6) [title II, § 203(b)(2)], added par. (3).

1999—Subsec. (a)(1). Pub. L. 106-113, § 1000(a)(6) [title IV, § 403(f)(1)], struck out “(other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title)” after “Any hospital”.

Subsec. (b). Pub. L. 106-113, § 1000(a)(6) [title IV, § 408(a)], amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary may not enter into an agreement under this section with any hospital unless—

“(1) except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds, and

“(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 300m of this title) for the State in which the hospital is located.”

Subsec. (c). Pub. L. 106-113, § 1000(a)(6) [title IV, § 403(f)(2)], struck out “, or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title” before the period at end of first sentence.

Subsec. (d). Pub. L. 106-113, § 1000(a)(6) [title IV, § 408(b)], struck out “(1)” before “Any agreement with a hospital” and struck out pars. (2) and (3), which related to limiting payments under extended care service agreements pursuant to this section to hospitals with more than 49 beds where skilled nursing facilities were available or where such payments exceeded a designated maximum.

1997—Subsec. (a)(2)(B)(ii)(II). Pub. L. 105-33 inserted “subsections (a) through (d) of” before “section 1395yy”.

1990—Subsec. (a)(2)(B)(ii)(II). Pub. L. 101-508 substituted “the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to free-standing skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.” for “the previous calendar year” and all that follows through the period, which was executed by making the substitution for “the previous calendar year under the State plan (of the State in which the hospital is located) under subchapter XIX of this chapter to skilled nursing facilities located in the State and which meet the requirements specified in section 1396a(a)(28) of this title, or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day paid for routine services during the previous calendar year under this subchapter to skilled nursing facilities in such State.”

1989—Subsecs. (d)(1), (f). Pub. L. 101-234 repealed Pub. L. 100-360, § 104(d)(6), and provided that the provisions of law amended or repealed by such section are restored

or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (d)(1). Pub. L. 100-360, §104(d)(6), struck out “post-hospital” before “extended care services” wherever appearing.

Subsec. (d)(3). Pub. L. 100-360, §411(b)(4)(D), inserted before period at end “, except that such payment shall continue to be made in the period for those patients who are receiving extended care services at the time the hospital reaches the limit specified in this paragraph”.

Subsec. (f). Pub. L. 100-360, §411(l)(1)(C), as added by Pub. L. 100-485, §608(d)(27)(B), added Pub. L. 100-203, §4201(d)(3), see 1987 Amendment note below.

Pub. L. 100-360, §104(d)(6), struck out “post-hospital” before “extended care services”.

1987—Subsec. (b)(1). Pub. L. 100-203, §4005(b)(1), substituted “100” for “50”.

Subsec. (d). Pub. L. 100-203, §4005(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 100-203, §4201(d)(3), as added by Pub. L. 100-360, §411(l)(1)(C), and Pub. L. 100-485, §608(d)(27)(B), substituted “section 1395i-3” for “section 1395x(j)(15)”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-173 applicable to payments for services furnished during cost reporting periods beginning on or after Jan. 1, 2004, see section 405(a)(2) of Pub. L. 108-173, set out as a note under section 1395f of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(6) [title II, §203(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-482, provided that: “The amendments made by this section [amending this section and section 1395yy of this title] shall apply to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 21, 2000].”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(6) [title IV, §408(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-375, provided that: “The amendments made by this section [amending this section] take effect on the date that is the first day after the expiration of the transition period under section 1888(e)(2)(E) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(E)) for payments for covered skilled nursing facility services under the medicare program.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to items and services furnished on or after July 1, 1998, see section 4432(d) of Pub. L. 105-33, set out as a note under section 1395i-3 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title IV, §4008(j)(4), Nov. 5, 1990, 104 Stat. 1388-52, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1990.”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101-234, set out as a note under section 1395c of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100-360, see section 608(g)(1) of Pub. L. 100-485, set out as a note under section 704 of this title.

Amendment by section 104(d)(6) of Pub. L. 100-360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and

succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100-360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100-360, amendment by section 411(b)(4)(D), (l)(1)(C) of Pub. L. 100-360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, effective as if included in the enactment of that provision in Pub. L. 100-203, see section 411(a) of Pub. L. 100-360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IV, §4005(b)(4), Dec. 22, 1987, 101 Stat. 1330-49, provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall apply to agreements under section 1883 of the Social Security Act [42 U.S.C. 1395tt] entered into after March 31, 1988.”

Amendment by section 4201(d)(3) of Pub. L. 100-203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i-3 of this title, see section 4204(a) of Pub. L. 100-203, as amended, set out as an Effective Date note under section 1395i-3 of this title.

#### EFFECTIVE DATE

Pub. L. 96-499, title IX, §904(d), Dec. 5, 1980, 94 Stat. 2617, provided that: “The amendments made by this section [enacting this section and section 1396f of this title] shall become effective on the date on which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].”

#### HOLD HARMLESS FOR AMENDMENT BY PUB. L. 101-508

Pub. L. 101-508, title IV, §4008(j)(2), Nov. 5, 1990, 104 Stat. 1388-51, provided that: “If, as a result of the amendment made by paragraph (1) [amending this section], the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act [42 U.S.C. 1395tt]) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.”

#### SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987

Pub. L. 101-508, title IV, §4008(j)(3), Nov. 5, 1990, 104 Stat. 1388-52, provided that: “Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act [42 U.S.C. 1395tt(b)(1)] that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.”

#### REPORT OF HOSPITAL ADMISSIONS FOR EXTENDED CARE SERVICES

Pub. L. 100-203, title IV, §4005(b)(3), Dec. 22, 1987, 101 Stat. 1330-49, as amended by Pub. L. 100-360, title IV, §411(b)(4)(E), as added by Pub. L. 100-485, title VI, §608(d)(18)(C), Oct. 13, 1988, 102 Stat. 2419, directed Secretary of Health and Human Services to report to Congress, not later than Feb. 1, 1989, concerning the proportion of admissions to hospitals for extended care services under this section which are denied or ap-

proved by a peer review organization, and recommendations for methods of encouraging hospitals that have a low occupancy rate, are eligible to enter (but have not entered) into an agreement under this section, and are located in areas with a need for additional providers of extended care services, to enter into such agreements.

REPORT ON HOSPITAL PROVIDERS OF EXTENDED CARE, SKILLED NURSING, AND INTERMEDIATE CARE SERVICES

Pub. L. 96-499, title IX, §904(c), Dec. 5, 1980, 94 Stat. 2617, directed Secretary of Health and Human Services, within three years after Dec. 5, 1980, to submit to Congress a report evaluating programs established by the amendments made by this section (enacting this section and section 1396f of this title), including in such report an analysis of the extent and effect of the agreements under such programs on availability and effective and economical provision of long-term care services, whether such programs should be continued, the results of any demonstration projects conducted under such programs, and whether eligibility to participate in such programs should be extended to other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds.

**§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities**

**(a) Transitional allowances; procedures applicable**

Any hospital may file an application with the Secretary (in such form and including such data and information as the Secretary may require) for establishment of a transitional allowance under this subchapter with respect to the closing or conversion of an underutilized hospital facility. The Secretary also may establish procedures, consistent with this section, by which a hospital, before undergoing an actual closure or conversion of a hospital facility, can have a determination made as to whether or not it will be eligible for a transitional allowance under this section with respect to such closure or conversion.

**(b) Allowable costs as transitional allowances; findings and determinations**

If the Secretary finds, after consideration of an application under subsection (a), that—

(1) the hospital's closure or conversion—

(A) is formally initiated after September 30, 1981,

(B) is expected to benefit the program under this subchapter by (i) eliminating excess bed capacity, (ii) discontinuing an underutilized service for which there are adequate alternative sources, or (iii) substituting for the underutilized service some other service which is needed in the area, and

(C) is consistent with the findings of an appropriate health planning agency and with any applicable State program for reduction in the number of hospital beds in the State, and

(2) in the case of a complete closure of a hospital—

(A) the hospital is a private nonprofit hospital or a local governmental hospital, and

(B) the closure is not for replacement of the hospital,

the Secretary may include as an allowable cost in the hospital's reasonable cost (for the purpose

of making payments to the hospital under this subchapter) an amount (in this section referred to as a "transitional allowance"), as provided in subsection (c).

**(c) Factors determinative of transitional allowance**

(1) Each transitional allowance established shall be reasonably related to the prior or prospective use of the facility involved under this subchapter and shall recognize—

(A) in the case of a facility conversion or closure (other than a complete closure of a hospital)—

(i) in the case of a private nonprofit or local governmental hospital, that portion of the hospital's costs attributable to capital assets of the facility which have been taken into account in determining reasonable cost for purposes of determining the amount of payment to the hospital under this subchapter, and

(ii) in the case of any hospital, transitional operating cost increases related to the conversion or closure to the extent that such operating costs exceed amounts ordinarily reimbursable under this subchapter; and

(B) in the case of complete closure of a hospital, the outstanding portion of actual debt obligations previously recognized as reasonable for purposes of reimbursement under this subchapter, less any salvage value of the hospital.

(2) A transitional allowance shall be for a period (not to exceed 20 years) specified by the Secretary, except that, in the case of a complete closure described in paragraph (1)(B), the Secretary may provide for a lump-sum allowance where the Secretary determines that such a one-time allowance is more efficient and economical.

(3) A transitional allowance shall take effect on a date established by the Secretary, but not earlier than the date of completion of the closure or conversion concerned.

(4) A transitional allowance shall not be considered in applying the limits to costs recognized as reasonable pursuant to the third sentence of subparagraph (A) and subparagraph (L)(i) of section 1395x(v)(1) of this title, or in determining whether the reasonable cost exceeds the customary charges for a service for purposes of determining the amount to be paid to a provider pursuant to sections 1395f(b) and 1395l(a)(2) of this title.

**(d) Hearing to review determination**

A hospital dissatisfied with a determination of the Secretary on its application under this section may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in such form and within such time period as the Secretary establishes) a request for such a hearing. The Secretary shall make a final determination on such application within 30 days after the last day of such hearing.

(Aug. 14, 1935, ch. 531, title XVIII, §1884, as added Pub. L. 97-35, title XXI, §2101(a)[(1)], Aug. 13, 1981, 95 Stat. 785; amended Pub. L. 97-248, title I, §128(a)(6), Sept. 3, 1982, 96 Stat. 366.)