prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act [42 U.S.C. 1395yy(d)] for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A) [amending section 1395x of this title].''

PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES

Pub. L. 101–508, title IV, §4008(k), Nov. 5, 1990, 104 Stat. 1388–52, provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A [42 U.S.C. 1395c et seq.] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

''(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

''(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES

Pub. L. 101–239, title VI, §6024, Dec. 19, 1989, 103 Stat. 2167, as amended by Pub. L. 101–508, title IV, §4008(e)(1), Nov. 5, 1990, 104 Stat. 1388–45, provided that: ''The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act [42 U.S.C. 1395yy(a)] for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985. The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.''

§ 1395zz. Provider education and technical assistance

(a) Coordination of education funding

The Secretary shall coordinate the educational activities provided through medicare contractors (as defined in subsection (g), including under section 1395ddd of this title) in order to maximize the effectiveness of Federal education efforts for providers of services and suppliers.

(b) Enhanced education and training

(1) Additional resources

There are authorized to be appropriated to the Secretary (in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund) such sums as may be necessary for fiscal years beginning with fiscal year 2005.

(2) Use

The funds made available under paragraph (1) shall be used to increase the conduct by medicare contractors of education and training of providers of services and suppliers regarding billing, coding, and other appropriate items and may also be used to improve the accuracy, consistency, and timeliness of contractor responses.

(c) Tailoring education and training activities for small providers or suppliers

(1) In general

Insofar as a medicare contractor conducts education and training activities, it shall tailor such activities to meet the special needs of small providers of services or suppliers (as defined in paragraph (2)). Such education and training activities for small providers of services and suppliers may include the provision of technical assistance (such as review of billing systems and internal controls to determine program compliance and to suggest more efficient and effective means of achieving such compliance).

(2) Small provider of services or supplier

In this subsection, the term ''small provider of services or supplier'' means—

(A) a provider of services with fewer than 25 full-time-equivalent employees; or

(B) a supplier with fewer than 10 full-time-equivalent employees.

(d) Internet websites; FAQs

The Secretary, and each medicare contractor insofar as it provides services (including claims processing) for providers of services or suppliers, shall maintain an Internet website which—

(1) provides answers in an easily accessible format to frequently asked questions, and

(2) includes other published materials of the contractor,

that relate to providers of services and suppliers under the programs under this subchapter (and subchapter XI insofar as it relates to such programs).

(e) Encouragement of participation in education program activities

A medicare contractor may not use a record of attendance at (or failure to attend) educational activities or other information gathered during an educational program conducted under this section or otherwise by the Secretary to select or track providers of services or suppliers for the purpose of conducting any type of audit or prepayment review.

(f) Construction

Nothing in this section or section 1395ddd(g) of this title shall be construed as providing for disclosure by a medicare contractor—

(1) of the screens used for identifying claims that will be subject to medical review; or

(2) of information that would compromise pending law enforcement activities or reveal findings of law enforcement-related audits.

(g) Definitions

For purposes of this section, the term ''medicare contractor'' includes the following:

(1) A medicare administrative contractor with a contract under section 1395kk–1 of this title, including a fiscal intermediary with a contract under section 1395h of this title and a carrier with a contract under section 1395u of this title.

(2) An eligible entity with a contract under section 1395ddd of this title.

Such term does not include, with respect to activities of a specific provider of services or supplier an entity that has no authority under this subchapter or subchapter IX with respect to such activities and such provider of services or supplier.

(Aug. 14, 1935, ch. 531, title XVIII, § 1889, as added and amended Pub. L. 108–173, title IX, § 921(a)(1), (d)(1), (e)(1), (f)(1), Dec. 8, 2003, 117 Stat. 2388, 2391.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, § 1889, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4361(a), 104 Stat. 1388–141, related to medicare and medigap information by telephone, prior to repeal by Pub. L. 103–432, title I, § 171(j)(3), (*l*), Oct. 31, 1994, 108 Stat. 4451, effective as if included in the enactment of Pub. L. 101–508.

Another prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, § 1889, formerly § 1833(f), as added Jan. 2, 1968, Pub. L. 90–248, title I, § 132(b), 81 Stat. 850, and amended Oct. 30, 1972, Pub. L. 92–603, title II, § 245(d), 86 Stat. 1424; Oct. 25, 1977, Pub. L. 95–142, § 16(a), 91 Stat. 1200; renumbered § 1889 and amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2321(d), 98 Stat. 1084, provided for purchase of durable medical equipment, covering (a) lease-purchase basis or rental and determination by Secretary, (b) waiver of coinsurance amount in purchase of used equipment, (c) reimbursement procedures, and (d) encouragement of lease-purchase basis, prior to repeal by Pub. L. 100–203, title IV, § 4062(d)(5), (e), Dec. 22, 1987, 101 Stat. 1330–109, applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989.

AMENDMENTS

2003—Subsecs. (b), (c). Pub. L. 108–173, § 921(d)(1), added subsecs. (b) and (c).

Subsec. (d). Pub. L. 108–173, § 921(e)(1), added subsec. (d).

Subsecs. (e) to (g). Pub. L. 108–173, § 921(f)(1), added subsecs. (e) to (g).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 921(d)(2), Dec. 8, 2003, 117 Stat. 2391, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, § 921(e)(2), Dec. 8, 2003, 117 Stat. 2391, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 2004.''

Pub. L. 108–173, title IX, § 921(f)(2), Dec. 8, 2003, 117 Stat. 2392, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

EFFECTIVE DATE

Pub. L. 108–173, title IX, § 921(a)(2), Dec. 8, 2003, 117 Stat. 2388, provided that: ''The amendment made by paragraph (1) [enacting this section] shall take effect on the date of the enactment of this Act [Dec. 8, 2003].''

SMALL PROVIDER TECHNICAL ASSISTANCE DEMONSTRATION PROGRAM

Pub. L. 108–173, title IX, § 922, Dec. 8, 2003, 117 Stat. 2392, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary [of Health and Human Services] shall establish a demonstration program (in this section referred to as the 'demonstration program') under which technical assistance described in paragraph (2) is made available, upon request and on a voluntary basis, to small providers of services or suppliers in order to improve compliance with the applicable requirements of the programs under medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] (including provisions of title XI of such Act [42 U.S.C. 1301 et seq.] insofar as they relate to such title and are not administered by the Office of the Inspector General of the Department of Health and Human Services).

''(2) FORMS OF TECHNICAL ASSISTANCE.—The technical assistance described in this paragraph is—

''(A) evaluation and recommendations regarding billing and related systems; and

''(B) information and assistance regarding policies and procedures under the medicare program, including coding and reimbursement.

''(3) SMALL PROVIDERS OF SERVICES OR SUPPLIERS.—In this section, the term 'small providers of services or suppliers' means—

''(A) a provider of services with fewer than 25 full-time-equivalent employees; or

''(B) a supplier with fewer than 10 full-time-equivalent employees.

''(b) QUALIFICATION OF CONTRACTORS.—In conducting the demonstration program, the Secretary shall enter into contracts with qualified organizations (such as peer review [now ''quality improvement''] organizations or entities described in section 1889(g)(2) of the Social Security Act [42 U.S.C. 1395zz(g)(2)], as inserted by section 921(f)(1)) with appropriate expertise with billing systems of the full range of providers of services and suppliers to provide the technical assistance. In awarding such contracts, the Secretary shall consider any prior investigations of the entity's work by the In-

spector General of Department of Health and Human Services or the Comptroller General of the United States.

''(c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The technical assistance provided under the demonstration program shall include a direct and in-person examination of billing systems and internal controls of small providers of services or suppliers to determine program compliance and to suggest more efficient or effective means of achieving such compliance.

''(d) GAO EVALUATION.—Not later than 2 years after the date the demonstration program is first implemented, the Comptroller General, in consultation with the Inspector General of the Department of Health and Human Services, shall conduct an evaluation of the demonstration program. The evaluation shall include a determination of whether claims error rates are reduced for small providers of services or suppliers who participated in the program and the extent of improper payments made as a result of the demonstration program. The Comptroller General shall submit a report to the Secretary and the Congress on such evaluation and shall include in such report recommendations regarding the continuation or extension of the demonstration program.

''(e) FINANCIAL PARTICIPATION BY PROVIDERS.—The provision of technical assistance to a small provider of services or supplier under the demonstration program is conditioned upon the small provider of services or supplier paying an amount estimated (and disclosed in advance of a provider's or supplier's participation in the program) to be equal to 25 percent of the cost of the technical assistance.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, from amounts not otherwise appropriated in the Treasury, such sums as may be necessary to carry out this section.''

§ 1395aaa. Contract with a consensus-based entity regarding performance measurement

(a) Contract

(1) In general

For purposes of activities conducted under this chapter, the Secretary shall identify and have in effect a contract with a consensus-based entity, such as the National Quality Forum, that meets the requirements described in subsection (c). Such contract shall provide that the entity will perform the duties described in subsection (b).

(2) Timing for first contract

As soon as practicable after July 15, 2008, the Secretary shall enter into the first contract under paragraph (1).

(3) Period of contract

A contract under paragraph (1) shall be for a period of 4 years (except as may be renewed after a subsequent bidding process).

(4) Competitive procedures

Competitive procedures (as defined in section 132 of title 41) shall be used to enter into a contract under paragraph (1).

(b) Duties

The duties described in this subsection are the following:

(1) Priority setting process

The entity shall synthesize evidence and convene key stakeholders to make recommendations, with respect to activities conducted under this chapter, on an integrated national strategy and priorities for health care performance measurement in all applicable settings. In making such recommendations, the entity shall—

(A) ensure that priority is given to measures—

(i) that address the health care provided to patients with prevalent, high-cost chronic diseases;

(ii) with the greatest potential for improving the quality, efficiency, and patient-centeredness of health care; and

(iii) that may be implemented rapidly due to existing evidence, standards of care, or other reasons; and

(B) take into account measures that—

(i) may assist consumers and patients in making informed health care decisions;

(ii) address health disparities across groups and areas; and

(iii) address the continuum of care a patient receives, including services furnished by multiple health care providers or practitioners and across multiple settings.

(2) Endorsement of measures

The entity shall provide for the endorsement of standardized health care performance measures. The endorsement process under the preceding sentence shall consider whether a measure—

(A) is evidence-based, reliable, valid, verifiable, relevant to enhanced health outcomes, actionable at the caregiver level, feasible to collect and report, and responsive to variations in patient characteristics, such as health status, language capabilities, race or ethnicity, and income level; and

(B) is consistent across types of health care providers, including hospitals and physicians.

(3) Maintenance of measures

The entity shall establish and implement a process to ensure that measures endorsed under paragraph (2) are updated (or retired if obsolete) as new evidence is developed.

(4) Removal of measures

The entity may provide input to the Secretary on quality and efficiency measures described in paragraph (7)(B) that could be considered for removal.

(5) Annual report to Congress and the Secretary; secretarial publication and comment

(A)[1] Annual report

By not later than March 1 of each year (beginning with 2009), the entity shall submit to Congress and the Secretary a report containing the following:

(i) A description of—

(I) the implementation of quality measurement initiatives under this chapter and the coordination of such initiatives with quality initiatives implemented by other payers;

(II) the recommendations made under paragraph (1);

[1] See 2018 Amendment note below.