

once the beneficiary uses lifetime reserve days, they can never be renewed.

(4) If the beneficiary elects not to use lifetime reserve days, the hospital or CAH may require him or her to pay for any services furnished after the regular days are exhausted.

(b) *Deemed election.* A beneficiary will be deemed to have elected not to use lifetime reserve days if the average daily charges for such days is equal to or less than the applicable coinsurance amount specified in § 409.83. A beneficiary would get no benefit from using the days under those circumstances.

(c) *Who may file an election.* An election not to use reserve days may be filed by—

(1) The beneficiary; or

(2) If the beneficiary is physically or mentally unable to act, by the beneficiary's legal representative. In addition, if some other payment source is available, such as private insurance, any person authorized under § 405.1664 of this chapter to execute a request for payment for the beneficiary may file the election.

(d) *Filing the election.* (1) The beneficiary's election not to use lifetime reserve days must be filed in writing with the hospital or CAH.

(2) The election may be filed at the time of admission to the hospital or CAH or at any time thereafter up to 90 days after the beneficiary's discharge.

(3) A retroactive election (that is, one made after lifetime reserve days have been used because the regular days were exhausted), is not acceptable unless it is approved by the hospital or CAH.

(e) *Period covered by election—(1) General rule.* Except as provided in paragraph (e)(2) of this section, an election not to use lifetime reserve days may apply to an entire hospital or CAH stay or to a single period of consecutive days in a stay, but cannot apply to selected days in a stay. For example, a beneficiary may restrict the election to the period covered by private insurance but cannot use individual lifetime reserve days within that period. If an election not to use reserve days is effective after the first day on which reserve days are available, it must remain in effect until the end of the stay,

unless it is revoked in accordance with § 409.66.

(2) *Exception.* A beneficiary election not to use lifetime reserve days for an inpatient hospital or inpatient CAH stay for which payment may be made under the prospective payment system (part 412 of this chapter) is subject to the following rules:

(i) If the beneficiary has one or more regular benefit days (see § 409.61(a)(1) of this chapter) remaining in the benefit period upon entering the hospital or CAH, an election not to use lifetime reserve days will apply automatically to all days that are not outlier days. The beneficiary may also elect not to use lifetime reserve days for outlier days but this election must apply to all outlier days.

(ii) If the beneficiary has no regular benefit days (see § 409.61(a)(1) of this chapter) remaining in the benefit period upon entering the hospital or CAH, an election not to use lifetime reserve days must apply to the entire hospital or CAH stay.

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#### § 409.66 Revocation of election not to use lifetime reserve days.

(a) Except as provided in paragraph (c) of this section, a beneficiary (or anyone authorized to execute a request for payment, if the beneficiary is incapacitated) may revoke an election not to use lifetime reserve days during hospitalization or within 90 days after discharge.

(b) The revocation must be submitted to the hospital or CAH in writing and identify the stay or stays to which it applies.

(c) *Exceptions.* A revocation of an election not to use lifetime reserve days may not be filed—

(1) After the beneficiary dies; or

(2) After the hospital or CAH has filed a claim under the supplementary medical insurance program (Medicare Part B), for medical and other health services furnished to the beneficiary on the days in question.

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