

applicable, for routine services furnished during the previous calendar year; or

(2) Meet the State plan and payment requirements described in this subpart, as applicable.

(b) *Application of the rule.* The payment methodology used by a State to set payment rates for routine NF services must apply to all swing-bed hospitals in the State.

[59 FR 56237, Nov. 10, 1994]

Subpart D [Reserved]

Subpart E—Payment Adjustments for Hospitals That Serve a Disproportionate Number of Low-Income Patients

SOURCE: 57 FR 55143, Nov. 24, 1992, unless otherwise noted.

§ 447.296 Limitations on aggregate payments for disproportionate share hospitals for the period January 1, 1992 through September 30, 1992.

(a) The provisions of this section apply to the 50 States and the District of Columbia, but not to any State whose entire Medicaid program is operated under a waiver granted under section 1115 of the Act.

(b) For the period January 1, 1992 through September 30, 1992, FFP is available for aggregate payments to hospitals that serve a disproportionate number of low-income patients with special needs only if the payments are made in accordance with sections 1902(a)(13)(A) and 1923 of the Act, and with one of the following:

(1) An approved State plan in effect as of September 30, 1991.

(2) A State plan amendment submitted to CMS by September 30, 1991.

(3) A State plan amendment, or modification thereof, submitted to CMS between October 1, 1991 and November 26, 1991, if the amendment, or modification thereof, was intended to limit the State's definition of disproportionate share hospitals to those hospitals with Medicaid inpatient utilization rates or low-income utilization rates (as defined in section 1923 (b) of the Act) at

or above the statewide arithmetic mean.

(4) A methodology for disproportionate share hospital payments that was established and in effect as of September 30, 1991, or in accordance with a State law enacted or State regulation adopted as of September 30, 1991.

(5) A State plan amendment submitted to CMS by September 30, 1992 that increases aggregate disproportionate share hospitals payments in order to meet the minimum payment adjustments required by section 1923(c)(1) of the Act. The minimum payment adjustment is the amount required by the Medicare methodology described in section 1923(c)(1) of the Act for those hospitals that satisfy the minimum Federal share definition of a disproportionate share hospital in section 1923(b) of the Act.

(6) A State plan amendment submitted to CMS by September 30, 1992 that provides for a redistribution of disproportionate share hospital payments within the State without raising total payments compared to the previously approved State plan. CMS will approve the amendment only if the State submits written documentation that demonstrates to CMS that the aggregate payments that will be made after the redistribution are no greater than those payments made before the redistribution.

(7) A State plan amendment submitted to CMS by September 30, 1992 that provides for a reduction in disproportionate share hospital payments.

§ 447.297 Limitations on aggregate payments for disproportionate share hospitals beginning October 1, 1992.

(a) *Applicability.* The provisions of this section apply to the 50 States and the District of Columbia, but not to any State whose entire Medicaid program is operated under a waiver granted under section 1115 of the Act.

(b) *National payment target.* The national payment target for disproportionate share hospital (DSH) payments for any Federal fiscal year is equal to 12 percent of the total medical assistance expenditures that will be made during the Federal fiscal year under State plans, excluding administrative

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costs. A preliminary national expenditure target will be published by CMS prior to October 1 of each year. This preliminary national expenditure target will be superseded by a final national expenditure target published by April 1 of each Federal fiscal year, as specified in paragraph (d) of this section.

(c) *State disproportionate share hospital allotments.* Prior to October 1 of each Federal fiscal year, CMS will publish in the FEDERAL REGISTER preliminary State DSH allotments for each State. These preliminary State DSH allotments will be determined using the most current applicable actual and estimated State expenditure information as reported to CMS and adjusted by CMS as may be necessary using the methodology described in § 447.298. CMS will publish final State DSH allotments by April 1 of each Federal fiscal year, as described in paragraph (d) of this section.

(d) *Final national disproportionate share hospitals expenditure target and State disproportionate share hospitals allotments.*

(1) CMS will revise the preliminary national expenditure target and the preliminary State DSH allotments by April 1 of each Federal fiscal year. The final national DSH expenditure target and State DSH allotments will be based on the most current applicable actual and estimated expenditure information reported to CMS and adjusted by CMS as may be necessary immediately prior to the April 1 publication date. The final national expenditure target and State DSH allotments will not be recalculated for that Federal fiscal year based upon any subsequent actual or estimated expenditure information reported to CMS.

(2) If CMS determines that at any time a State has exceeded its final DSH allotment for a Federal fiscal year, FFP attributable to the excess DSH expenditures will be disallowed.

(3) If a State's actual DSH expenditures applicable to a Federal fiscal year are less than its final State DSH allotment for that Federal fiscal year, the State is permitted, to the extent allowed by its approved State plan, to make additional DSH expenditures applicable to that Federal fiscal year up

to the amount of its final DSH allotment for that Federal fiscal year.

(e) *Publication of limits.*

(1) Before the beginning of each Federal fiscal year, CMS will publish in the FEDERAL REGISTER—

(i) A preliminary national DSH expenditure target for the Federal fiscal year; and

(ii) A preliminary DSH allotment for each State for the Federal fiscal year.

(2) The final national DSH expenditure target and State DSH allotments will be published in the FEDERAL REGISTER by April 1 of each Federal fiscal year.

[57 FR 55143, Nov. 24, 1992, as amended at 58 FR 43182, Aug. 13, 1993]

§ 447.298 State disproportionate share hospital allotments.

(a) *Calculation of State's base allotment for Federal fiscal year 1993.*

(1) For Federal fiscal year 1993, CMS will calculate for each State a DSH allotment, using the State's "base allotment." The State's base allotment is the greater of:

(i) The total amount of the State's projected DSH payments for Federal fiscal year 1992 under the State plan applicable to Federal fiscal year 1992, calculated in accordance with paragraph (a)(2) of this section; or

(ii) \$1,000,000.

(2) In calculating the State's DSH payments applicable to Federal fiscal year 1992, CMS will derive amounts from payments applicable to the period of October 1, 1991, through September 30, 1992, under State plans or plan amendments that meet the requirements specified in § 447.296(b). The calculation will not include—

(i) DSH payment adjustments made by the State applicable to the period October 1, 1991 through December 31, 1991 under State plans or plan amendments that do not meet the criteria described in § 447.296; and

(ii) Retroactive DSH payments made in 1992 that are not applicable to Federal fiscal year 1992.

(3) CMS will calculate a percentage for each State by dividing the DSH base allotment by the total unadjusted medical assistance expenditures, excluding administrative costs, made during Federal fiscal year 1992. On the