

§ 405.517

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his or her practice, the payment will be based on the physician's reasonable charge for the test (as determined in accordance with § 405.502).

(b) If the bill or request for payment indicates that the test was performed by an outside laboratory, and identifies both the laboratory and the amount the laboratory charged, payment for the test will be based on the lower of—

(1) The laboratory's reasonable charge for the service (as determined in accordance with § 405.502), or

(2) The amount that the laboratory charged the physician for the service.

(c) If the bill or request for payment does not indicate that the conditions specified in paragraph (a) of this section were met, and does not identify both the laboratory and the amount the laboratory charged, payment will be based on the lowest charge at which the carrier estimates the test could have been secured from a laboratory serving the physician's locality. The carrier will estimate this lowest amount twice a year by (i) obtaining lists of charges laboratories make to physicians from as many commercial laboratories serving the carrier's area as possible (including laboratories in other States from which tests may be obtained by physicians in the carrier's service area) and (ii) establishing a schedule of lowest prices based on this information. The carrier will take into consideration specific circumstances, such as a need for emergency services that may be costlier than routine services, in making the estimate in a particular case. However, in no case may this estimate be higher than the lowest customary charge for commercial laboratories, or when applicable to the laboratory service, the lowest charge level determined in accordance with § 405.511, in the carrier's service area.

(d) When a physician bills, in accordance with paragraph (b) or (c) of this section, for a laboratory test and indicates that it was performed by an independent laboratory, a nominal payment will also be made to the physician for collecting, handling, and shipping the specimen to the laboratory, if the physician bills for such a service.

[46 FR 42672, Aug. 24, 1981, as amended at 51 FR 41351, Nov. 14, 1986]

§ 405.517 Payment for drugs and biologicals that are not paid on a cost or prospective payment basis.

(a) *Applicability*—(1) *Payment for drugs and biologicals before January 1, 2004.* Payment for a drug or biological that is not paid on a cost or prospective payment basis is determined by the standard methodology described in paragraph (b) of this section. Examples of when this procedure applies include a drug or biological furnished incident to a physician's service, a drug or biological furnished by an independent dialysis facility that is not included in the ESRD composite rate set forth in § 413.170(c) of this chapter, and a drug or biological furnished as part of the durable medical equipment benefit.

(2) *Payment for drugs and biologicals on or after January 1, 2004.* Effective January 1, 2004, payment for drugs and biologicals that are not paid on a cost or prospective payment basis are paid in accordance with Part 414, subpart I of this chapter.

(3) *Payment for drugs and biologicals on or after January 1, 2005.* Effective January 1, 2005, payment for drugs and biologicals that are not paid on a cost or prospective payment basis are paid in accordance with part 414, subpart K of this chapter.

(b) *Methodology.* Payment for a drug or biological described in paragraph (a) of this section is based on the lower of the actual charge on the Medicare claim for benefits or 95 percent of the national average wholesale price of the drug or biological.

(c) *Multiple-source drugs.* For multiple-source drugs and biologicals, for purposes of this regulation, the average wholesale price is defined as the lesser of the median average wholesale price for all sources of the generic forms of the drug or biological or the lowest average wholesale price of the brand name forms of the drug or biological.

[63 FR 58905, Nov. 2, 1998, as amended at 69 FR 1116, Jan. 7, 2004; 69 FR 66420, Nov. 15, 2004]