RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 1187 AND 1189]

Nonpublic and County Nursing Facilities

The Department of Public Welfare (Department) amends Chapters 1187 and 1189 (relating to nursing facility services; and county nursing facility services) to read as set forth in Annex A under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1) as amended by the act of July 4, 2008 (P. L. 557, No. 44) (Act 44) (62 P. S. § 443.1(7)). Notice of proposed rulemaking was published at 39 Pa.B. 4428 (August 1, 2009).

Purpose of Final-Form Rulemaking

The purpose of this final-form rulemaking is to amend the payment methodology for Medical Assistance (MA) nursing facility services as directed by Act 44 and to make other revisions to streamline and simplify rate-setting for nonpublic and county nursing facilities and to eliminate obsolete regulatory provisions.

The following is a summary of the specific provisions in the final-form rulemaking under Act 44.

1. *Phase-out of county costs in nonpublic nursing facility rate setting—§§ 1187.96, 1187.97 and 1187.98*

Act 44 directs the Department to include county costs in calculating rates for nonpublic nursing facilities for an additional rate year and to promulgate regulations to phase-out the use of county costs over a 3-year period beginning July 1, 2009, and ending June 30, 2012. To comply with Act 44, the Department amends the rate-setting methodology in §§ 1187.96 and 1187.98 (relating to price- and rate-setting computations; and phase-out median determination) and a related amendment to § 1187.97 (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities). The Department amends § 1187.96 to specify that it will use phase-out medians, as determined in accordance with § 1187.98, to set prices for the net operating cost centers (resident care, other resident related and administrative) for each peer group that contains a county nursing facility for the 3-year phase out period, rate years 2009-2010, 2010-2011 and 2011-2012.

The Department amends § 1187.98 to specify how phase-out medians will be calculated for the 3-year phase-out period. Under the amendments, the Department will continue to include county nursing facilities in determining peer groups in accordance with § 1187.94(1) (relating to peer grouping for price setting) for rate years 2009-2010, 2010-2011 and 2011-2012. Once peer groups have been determined, the Department will calculate an interim median by adding each county nursing facility's costs from the three most recent audited cost reports to a noncollapsed peer group based on bed size and Metropolitan Statistical Area group. The Department will then calculate the phase-out median as follows:

For rate year 2009-2010, the phase-out median will equal 75% of the interim median plus 25% of the median calculated in accordance with § 1187.96.

For rate year 2010-2011, the phase-out median will equal 50% of the interim median plus 50% of the median calculated in accordance with § 1187.96.

For rate year 2011-2012, the phase-out median will equal 25% of the interim median plus 75% of the median calculated in accordance with § 1187.96.

For rate year 2012-2013 and thereafter, county nursing facility MA—allowable costs will not be used in the rate-setting process for nonpublic nursing facilities.

The 3-year phase-out of the use of county nursing facility costs provides a transition period for nonpublic nursing facilities to adjust their business practices accordingly.

In addition to providing authority for calculation and use of phase-out medians, the Department makes a related amendment to § 1187.97 to extend application of this provision, which specifies how payments for county nursing facilities that privatize are calculated, to coincide with the phase-out of the county nursing facility costs in setting nonpublic nursing facility payment rates.

2. *Bed hold day, otherwise referred to as a hospital reserved bed day-§§ 1187.97 and 1187.104 and 1189.103*

Act 44 directs the Department to promulgate regulations to establish minimum occupancy requirements as a condition for MA nonpublic and county nursing facilities to receive reserved bed day payments for MA residents, and to phase-in the use of these requirements over a period of 2 rate years beginning July 1, 2009, and ending June 30, 2011. To comply with Act 44, the Department amends the rate-setting methodology in § 1187.97 and §§ 1187.104 and 1189.103 (relating to limitations on payment for reserved beds) as follows.

Beginning July 1, 2009, and ending June 30, 2010, the Department amends §§ 1187.104 and 1189.103 to specify that it will only pay a nonpublic or county MA nursing facility for a hospital reserved bed day if the facility's overall total occupancy for the applicable picture date is equal to or greater than 75%. Beginning July 1, 2010, and thereafter, the Department will pay a facility for a hospital reserved bed day only if the facility's overall total occupancy for the applicable picture date is equal to or greater than 85%. The Department also amends §§ 1187.97 and 1189.103 to exempt a new nursing facility from these occupancy requirements until Case-Mix Index Reports for the three picture dates used to calculate overall occupancy are available for the rate quarter.

The intent of these amendments is to ensure that MA recipients continue to receive access to medically necessary nursing facility services while encouraging nursing facility efficiency and economy associated with nursing facility occupancy levels.

The Department also added language to §§ 1187.104 and 1189.103, based on public comments, to ensure that a resident's bed is held regardless of whether the MA nursing facility has met the minimum occupancy requirement for payment. Further, as a result of this amendment, the Department added language to these sections that hospital reserve bed days may not be billed to the resident.

Following are other amendments in the final-form rulemaking.

1. *Fixed property component of a nonpublic nursing facility's capital rate—§§ 1187.2, 1187.51, 1187.57, 1187.91, 1187.96 and 1187.112*

Beginning in Fiscal Year 2009-2010, the Department amends § 1187.96 and §§ 1187.51, 1187.57 and 1187.91 (relating to scope; selected capital cost policies; and database) to delete references to the use of appraisals in the establishment of the fixed property component of a nonpublic nursing facility's capital rate and to specify instead that the fixed property component of a nonpublic nursing facility's capital rate will be based on the number of MA allowable beds multiplied by an assigned per bed cost of $26,000. The result of this calculation will then be multiplied by the financial yield rate. The Department also added a definition of "allowable bed" in § 1187.2 (relating to definitions).

The elimination of the use of appraisals in the establishment of the fixed property component of a nonpublic nursing facility's capital rate will make certain terms and other provisions in Chapter 1187 obsolete. Specifically, the terms "appraisal," "bed cost limitation," "FRV—fair rental value," "initial appraisal," "limited appraisal," "movable property appraisal," "reappraisal" and "updated appraisal" will no longer be used in the payment methodology. In addition, because all allowable beds will be assigned a fixed value of $26,000, the cost per bed maximum limitation in § 1187.112 will be obsolete. Therefore, the Department deletes these definitions from § 1187.2 and rescinds § 1187.112.

2. *Obsolete moveable property provisions—§§ 1187.57, 1187.91, 1187.96 and 1187.97*

The Department deletes the major movable property provisions that relate to cost report periods prior to January 1, 2001, in §§ 1187.57, 1187.91, 1187.96 and 1187.97. All nursing facility cost reports in the database used for rate setting are for a period beginning after January 1, 2001; therefore, the provisions regarding the cost report periods prior to January 1, 2001, are obsolete. This deletion does not change the method used by the Department to determine a nonpublic nursing facility's major movable component of its capital rate. In accordance with regulation, a nonpublic nursing facility's major movable property component will be based on the nursing facility's audited cost of major movable property. Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and report the cost of minor movable property and the cost of supplies as net operating costs in accordance with § 1187.51 and instructions for the MA-11.

Affected Individuals and Organizations

This final-form rulemaking affects all nonpublic and county nursing facilities enrolled in the MA Program.

Accomplishments and Benefits

This final-form rulemaking benefits this Commonwealth's MA nursing facility residents by assuring they will continue to have access to medically necessary nursing facility services while providing for reasonable and adequate payments to MA nursing facility providers consistent with the fiscal resources of this Commonwealth.

Fiscal Impact

Fiscal impact is not anticipated as a result of this final-form rulemaking through June 30, 2011.

Paperwork Requirements

There are no new or additional paperwork requirements.

Public Comment

Three commentators (two advocacy groups and one nursing facility association) commented on the proposed rulemaking. Two of these commentators requested changes to the reserved bed days provisions. The other commentator did not oppose the proposed rulemaking. Comments were not received from the Independent Regulatory Review Commission (IRRC), the House Committee on Health and Human Services, the Senate Committee on Public Health and Welfare or other State agencies.

Discussion of Comments and Major Changes

§§ 1187.97, 1187.104 and 1189.103

Commentators requested provisions be added to §§ 1187.97, 1187.104 and 1189.103 to ensure that a resident's bed is held regardless of whether the MA nursing facility has met the minimum occupancy requirement for payment.

Response

The Department agrees and revised § 1187.104, which pertains to nonpublic facilities, and § 1189.103, which pertains to county facilities. The Department, however, did not revise § 1187.97 because an amendment to this section is unnecessary. Since the amendments to the bed hold provisions in § 1187.104 apply to all nonpublic facilities, it would be duplicative to add this language to § 1187.97.

In addition to the major changes discussed previously, the Department added language to §§ 1187.104 and 1189.103 stating that hospital reserve bed days may not be billed to the resident. This language was added to ensure that nursing facilities do not avoid the impact of this final-form rulemaking by charging residents for hospital reserve bed days for which MA payment is no longer available because of their failure to meet the minimum occupancy requirements in §§ 1187.104 and 1189.103. As noted in the proposed rulemaking, the intent of the minimum occupancy requirements is to "encourag[e] nursing facility efficiency and economy associated with nursing facility occupancy levels." If nursing facilities are permitted to charge and receive bed reserve payments for beds that would otherwise remain empty, the purpose of the statutory requirement and implementing regulation would be defeated. Further, MA recipients and their families should not be made to subsidize inefficiencies in nursing facility operation.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 21, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 4428, to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.1) and (j.2)), on October 4, 2010, the final-form rulemaking was approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 21, 2010, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of intention to amend the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) Adoption of this final-form rulemaking in the manner provided by this order is necessary and appropriate for the administration and enforcement of sections 201(2), 206(2), 403(b) and 443.1 of the code as amended by Act 44.

Order

The Department, acting under sections 201(2), 206(2), 403(b) and 443.1 of the code as amended by Act 44, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 1187 and 1189, are amended by amending §§ 1187.2, 1187.51, 1187.57, 1187.91, 1187.94, 1197.96—1197.98, 1187.104 and 1189.103 and by deleting § 1187.112 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Department shall submit this order and Annex A to the Offices of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect July 1, 2009.

HARRIET DICHTER,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: 14-516. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Allowable bed—A nursing facility bed that is not subject to the limitation in § 1187.113 (relating to capital component payment limitation).

* * * * *

Amortization—capital costs—Preopening and ongoing costs directly related to capital formation and development which are expended over a period greater than 1 year. These costs include loan acquisition expenses as well as interest paid during the construction or preopening purchase period on a debt to acquire, build or carry real property.

Audited MA-11 cost reports—MA-11 cost reports that have been subjected to desk or field audit procedures by the Commonwealth and issued to providers.

Benefits, fringe—Nondiscriminatory employee benefits which are normally provided to nursing facility employees in conjunction with their employment status.

* * * * *

Depreciation—A loss of utility and a reduction in value caused by obsolescence or physical deterioration such as wear and tear, decay, dry rot, cracks, encrustation or structural defects of property, plant and equipment.

Facility MA CMI—The arithmetic mean CMI for MA residents in the nursing facility for whom the Department paid an MA day of care on the picture date.

* * * * *

Independent assessor—An agent of the Department who performs comprehensive evaluations and makes recommendations to the Department regarding the need for nursing facility services or the need for specialized services, or both, for individuals seeking admission to or residing in nursing facilities.

Initial Federally-approved PA Specific MDS—The first assessment or tracking form completed for a resident upon admission.

* * * * *

LTCCAP—Long-Term Care Capitated Assistance Program—The Department's community-based managed care program for the frail elderly based on the Federal Program of All-inclusive Care for the Elderly (PACE) (see section 1894 of the Social Security Act (42 U.S.C.A. § 1395eee)).

MA MCO—Medical Assistance Managed Care Organization—An entity under contract with the Department that manages the purchase and provision of health services, including nursing facility services, for MA recipients who are enrolled as members in the entity's health service plan.

* * * * *

Movable property—A tangible item that is used in a nursing facility in the course of providing nursing facility services to residents and that is not fixed property or a supply. There are two classes of movable property:

(i) *Major movable property*. Any movable property that has an acquisition cost of $500 or more.

(ii) *Minor movable property*. Any movable property that has an acquisition cost of less than $500.

NIS—Nursing Information System—The comprehensive automated database of nursing facility, resident and fiscal information needed to operate the Pennsylvania Case-Mix Payment System.

* * * * *

Real estate tax cost—The cost of real estate taxes assessed against a nursing facility for a 12-month period, except that, if the nursing facility is contractually or otherwise required to make a payment in lieu of real estate taxes, that nursing facility's "cost of real estate taxes" is deemed to be the amount it is required to pay for a 12-month period.

Rebasing—The process of updating cost data for subsequent rate years.

* * * * *

UMR—Utilization Management Review—An audit conducted by the Department's medical and other professional personnel to monitor the accuracy and appropriateness of payments to nursing facilities and to determine the necessity for continued stay of residents.

Year one of implementation—The period of January 1, 1996, through June 30, 1996.

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Subchapter E. ALLOWABLE PROGRAM COSTS AND POLICIES

§ 1187.51. Scope.

* * * * *

(e) Within the limits of this subchapter, allowable costs for purposes of cost reporting include those costs necessary to provide nursing facility services. These may include costs related to the following:

* * * * *

(4) *Capital costs*.

(i) Assigned cost of fixed property.

(ii) Acquisition cost of major movable property.

(iii) Real estate tax cost.

§ 1187.57. Selected capital cost policies.

The Department will establish a prospective facility-specific capital rate annually for each nursing facility. That rate will consist of three components: the fixed property component, the movable property component and the real estate tax component.

(1) *Fixed property component*. The Department will base the nursing facility's fixed property component on an assigned cost of $26,000 per allowable bed.

(2) *Movable property component*. The Department will determine the movable property component of each nursing facility's capital rate as follows:

(i) The Department will base the nursing facility's movable property component on the nursing facility's audited cost of major movable property, as set forth in that MA-11.

(ii) Each nursing facility shall report the acquisition cost of all major movable property on the major movable property line of its MA-11 and shall report the cost of minor movable property and the cost of supplies as net operating costs in accordance with § 1187.51 (relating to scope) and instructions for the MA-11.

(3) *Real estate tax cost component*. A nursing facility's real estate tax component will be based solely upon the audited cost of that nursing facility's 12-month real estate tax cost, as set forth on the most recent audited MA-11 cost report available in the NIS database.

Subchapter G. RATE SETTING

§ 1187.91. Database.

The Department will set rates for the case-mix payment system based on the following data:

(1) *Net operating costs*.

(i) The net operating prices will be established based on the following:

(A) Audited nursing facility costs for the 3 most recent years available in the NIS database adjusted for inflation. This database includes audited MA-11 cost reports that are issued by the Department on or before March 31 of each July 1 price setting period.

(B) If a nursing facility that has participated in the MA Program for 3 or more consecutive years has fewer than three audited cost reports in the NIS database that are issued by the Department on or before March 31 of each July 1 price setting period, the Department will use reported costs, as adjusted to conform to Department regulations, for those years not audited within 15 months of the date of acceptance, until audits have been completed and are available in the NIS database for price setting.

(C) If a nursing facility, that has not participated in the MA Program for 3 or more consecutive years, has fewer than three audited cost reports in the NIS database that are issued by the Department on or before March 31 of each July 1 price setting period, the Department will use all available audited cost reports in the NIS database.

(D) For net operating prices effective on or after July 1, 2001, the Department will revise the audited costs specified in clauses (A)—(C) by disregarding audit adjustments disallowing or reclassifying to capital costs, the costs of minor movable property (as defined in § 1187.2 (relating to definitions), effective on July 1, 2001) or linens reported as net operating costs on cost reports for fiscal periods beginning prior to January 1, 2001. The Department will not adjust the audited statistics when revising the nursing facility audited resident care, other resident care and administrative allowable costs to disregard the adjustments relating to minor movable property and linen costs. After revising the audited costs to disregard these adjustments, the Department will recalculate the maximum allowable administrative cost, and will disallow administrative costs in excess of the 12% limitation as specified in § 1187.56(1)(i) (relating to selected administrative cost policies).

(ii) Subparagraph (i)(B) does not apply if a nursing facility is under investigation by the Office of Attorney General. In this situation, the Department will use a maximum of the three most recent available audited cost reports in the NIS database used for price setting.

(iii) A cost report for a period of less than 12 months will not be included in the NIS database used for each price setting year.

(iv) Prior to price setting, cost report information will be indexed forward to the 6th month of the 12-month period for which the prices are set. The index used is the 1st Quarter issue of the CMS Nursing Home Without Capital Market Basket Index.

(v) Total facility and MA CMI averages from the quarterly CMI reports will be used to determine case-mix adjustments for each price-setting and rate-setting period as specified in § 1187.96(a)(1)(i) and (5) (relating to price- and rate-setting computations).

(2) *Capital costs*.

(i) *Fixed property component*. The fixed property component of a nursing facility's capital rate will be based upon the total assigned cost of the nursing facility's allowable beds.

(ii) *Movable property component*. The movable property component of a nursing facility's capital rate will be based upon the audited costs of the nursing facility's major movable property as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

(iii) *Real estate tax cost component*. The real estate tax component of a nursing facility's capital rate will be based upon the nursing facility's actual audited real estate tax

costs as set forth in the nursing facility's most recent audited MA-11 cost report available in the NIS database.

§ 1187.94. Peer grouping for price setting.

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

(1) Nursing facilities participating in the MA Program, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, will be classified into 12 mutually exclusive groups based on MSA group classification and nursing facility certified bed complement.

(i) Effective for rate setting periods commencing July 1, 2004, the Department will use the MSA group classification published by the Federal Office of Management and Budget in the OMB Bulletin No. 99-04 (relating to revised definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions), to classify each nursing facility into one of three MSA groups or one non-MSA group.

(ii) The Department will use the bed complement of the nursing facility on the final day of the reporting period of the most recent audited MA-11 used in the NIS database to classify nursing facilities into one of three bed complement groups.

(iii) The Department will classify each nursing facility into one of the following 12 peer groups:

Peer Group #	*MSA Group*	*# Beds*
1	A	> or = 270
2	A	120—269
3	A	3—119
4	B	> or = 270
5	B	120—269
6	B	3—119
7	C	> or = 270
8	C	120—269
9	C	3—119
10	non-MSA	> or = 270
11	non-MSA	120—269
12	non-MSA	3—119

(iv) A peer group with fewer than seven nursing facilities will be collapsed into the adjacent peer group with the same bed size. If the peer group with fewer than seven nursing facilities is a peer group in MSA B or MSA C and there is a choice of two peer groups with which to merge, the peer group with fewer than seven nursing facilities will be collapsed into the peer group with the larger population MSA group.

(v) For rate years 2009-2010, 2010-2011 and 2011-2012, county nursing facilities will be included when determining the number of nursing facilities in a peer group in accordance with subparagraph (iv).

(2) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a special rehabilitation facility into one peer group, peer group number 13. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of special rehabilitation facilities.

(3) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a hospital-based nursing facility into one peer group, peer group number 14. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of hospital-based nursing facilities.

(4) Once nursing facilities have been classified into peer groups for price setting, the nursing facility costs will remain in that peer group until prices are rebased, unless paragraph (5) applies.

(5) Paragraph (3) sunsets on the date that amendments are effective in Chapter 1163 (relating to inpatient hospital services), to allow for the inclusion of costs previously allocated to hospital-based nursing facilities. Subsequent to the effective date of the amendments to Chapter 1163, the Department will classify hospital-based nursing facilities in accordance with paragraph (1).

§ 1187.96. Price- and rate-setting computations.

(a) Using the NIS database in accordance with this subsection and § 1187.91 (relating to database), the Department will set prices for the resident care cost category.

* * * * *

(3) For rate years 2006-2007, 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the resident care price will be the phase-out median as determined in accordance with § 1187.98 (relating to phase-out median determination).

* * * * *

(b) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the other resident related cost category.

* * * * *

(3) For rate years 2006-2007, 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the other resident related price will be the phase-out median as determined in accordance with § 1187.98.

* * * * *

(c) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set prices for the administrative cost category.

* * * * *

(3) For rate years 2006-2007, 2007-2008, 2009-2010, 2010-2011 and 2011-2012, the median used to set the administrative price will be the phase-out median as determined in accordance with § 1187.98.

* * * * *

(d) Using the NIS database in accordance with this subsection and § 1187.91, the Department will set a rate for the capital cost category for each nursing facility by adding the nursing facility's fixed property component, movable property component and real estate tax component and dividing the sum of the three components by the nursing facility's total actual resident days, adjusted to 90% occupancy, if applicable.

(1) The Department will determine the fixed property component of each nursing facility's capital rate as follows:

(i) The Department will multiply the total number of the nursing facility's allowable beds as of April 1, immedi-

ately preceding the rate year, by $26,000 to determine the nursing facility's allowable fixed property cost.

(ii) The Department will multiply the result by the financial yield rate.

(2) The Department will determine the movable property component of each nursing facility's capital rate based on the audited actual costs of major movable property as set forth in the most recent audited MA-11 cost report available in the NIS database in accordance with § 1187.91(a)(ii). This amount is referred to as the nursing facility's allowable movable property cost.

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§ 1187.97. Rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities.

The Department will establish rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities and former prospective payment nursing facilities as follows:

(1) *New nursing facilities*.

* * * * *

(ii) The three components of the capital portion of the case-mix rate are determined as follows:

(A) *Fixed property component*. The fixed property component will be determined in accordance with § 1187.96(d)(1).

(B) *Movable property component*. The movable property component will be determined as follows:

(I) The nursing facility's acquisition cost, as determined in accordance with § 1187.61(b) (relating to movable property cost policies), for any new items of movable property acquired on or before the date of enrollment in the MA program, will be added to the nursing facility's remaining book value for any used movable property as of the date of enrollment in the MA program to arrive at the nursing facility's movable property cost.

* * * * *

(iii) Newly constructed nursing facilities are exempt from the adjustment to 90% occupancy until the nursing facility has participated in the MA Program for one full annual price setting period as described in § 1187.95 (relating to general principles for rate and price setting).

(iv) A new nursing facility is exempt from the occupancy requirements in § 1187.104 (1)(ii) (relating to limitations on payment for reserved beds) until a CMI Report for each of the three picture dates used to calculate overall occupancy as set forth in § 1187.104(1)(iii) is available for the rate quarter.

(2) *Nursing facilities with a change of ownership and reorganized nursing facilities*.

(i) *New provider*. The new nursing facility provider will be paid exactly as the old nursing facility provider, except that, if a county nursing facility becomes a nursing facility between July 1, 2006, and June 30, 2012, the per diem rate for the nursing facility will be computed in accordance with § 1187.96, using the data contained in the NIS database. Net operating and capital rates for the old nursing facility provider will be assigned to the new nursing facility provider.

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§ 1187.98. Phase-out median determination.

(a) For rate years 2006-2007 and 2007-2008, the Department will determine a phase-out median for each net operating cost center for each peer group to calculate a peer group price. The Department will establish the phase-out median as follows:

(1) Peer groups will be established in accordance with §§ 1187.91 and 1187.94 (relating to database; and peer grouping for price setting).

(2) County nursing facilities will be included when determining the number of nursing facilities in a peer group in accordance with § 1187.94(1)(iv).

(3) Audited county nursing facilities' costs from the 3 most recent audited cost reports audited in accordance with this chapter, will be included in the established peer groups when determining a median in accordance with § 1187.96 (relating to price- and rate-setting computations).

(b) For rate years, 2009-2010, 2010-2011 and 2011-2012, the Department will determine a phase-out median for each net operating cost center for each peer group to calculate a peer group price. The Department will establish the phase-out median as follows:

(1) The Department will establish an interim phase out median for the rate year as specified in subsection (a).

(2) The phase-out median for the 2009-2010 rate year will equal 75% of the interim median calculated in accordance with paragraph (1) plus 25% of the median calculated in accordance with § 1187.96.

(3) The phase-out median for the 2010-2011 rate year will equal 50% of the interim median calculated in accordance with paragraph (1) plus 50% of the median calculated in accordance with § 1187.96.

(4) The phase-out median for the 2011-2012 rate year will equal 25% of the interim median calculated in accordance with paragraph (1) plus 75% of the median calculated in accordance with § 1187.96.

(c) For the rate year, 2012-2013 and thereafter, county nursing facility MA allowable costs will not be used in the rate-setting process for nonpublic nursing facilities.

Subchapter H. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS

§ 1187.104. Limitations on payment for reserved beds.

(a) The Department will make payment to a nursing facility for a reserved bed when the resident is absent from the nursing facility for a continuous 24-hour period because of hospitalization or therapeutic leave subject to the limits in subsection (b). A nursing facility shall record each reserved bed for therapeutic leave on the nursing facility's daily census record and MA invoice. When the bed reserved for a resident who is hospitalized is temporarily occupied by another resident, a nursing facility shall record the occupied bed on the nursing facility's daily MA census record and the MA invoice. During the reserved bed period the same bed shall be available for the resident upon the resident's return to the nursing facility.

(b) The payment for reserved bed days is subject to the following limits:

(1) *Hospitalization*.

(i) A resident receiving nursing facility services is eligible for a maximum of 15 consecutive reserved bed

days per hospitalization. The Department will pay a nursing facility at a rate of 1/3 of the nursing facility's current per diem rate on file with the Department for a hospital reserved bed day if the nursing facility meets the overall occupancy requirements of subparagraph (ii).

(ii) A nursing facility's overall occupancy rate shall equal or exceed the following:

(A) During the rate year 2009-2010, the nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs must equal or exceed 75%.

(B) Beginning with the rate year 2010-2011 and thereafter, the nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs must equal or exceed 85%.

(iii) The Department will calculate a nursing facility's overall occupancy rate for a rate quarter as follows:

(A) The Department will identify the picture date for the rate quarter as specified in § 1187.96(a)(5) (relating to price- and rate-setting computations) and the two picture dates immediately preceding this picture date.

(B) The Department will calculate the nursing facility's occupancy rate for each of the picture dates identified in clause (A) by dividing the total number of assessments listed in the facility's CMI report for that picture date by the number of the facility's certified beds on file with the Department on the picture date and multiplying the result by 100%. The Department will assign the highest of the three picture date occupancy rates as the nursing facility's overall occupancy rate for the rate quarter.

(C) The Department will only use information contained on a valid CMI report to calculate a nursing facility's overall occupancy rate. If a nursing facility did not submit a valid CMI report for a picture date identified in clause (A), the Department will calculate the nursing facility's overall occupancy rate based upon the valid CMI reports that are available for the identified picture dates. If no valid CMI reports are available for the picture dates identified in clause (A), the nursing facility is not eligible to receive payment for hospital reserve bed days in the rate quarter.

(D) For purposes of this subsection, a valid CMI report is a CMI report that meets the requirements of § 1187.33(a)(5) and (6) (relating to resident data and picture date reporting requirements).

(iv) If the resident's hospital stay exceeds 15 consecutive days, the nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the nursing facility if, at the time of readmission, the resident requires the services provided by the nursing facility.

(v) If the resident's hospital stay is less than or equal to 15 consecutive days, the nursing facility shall readmit the resident to the same bed the resident occupied before the hospital stay regardless whether the nursing facility is eligible for payment for hospital reserved beds under subparagraph (b)(1)(i), if, at the time of readmission, the resident requires the services provided by the nursing facility.

(vi) Hospital reserved bed days may not be billed as therapeutic leave days and may not be billed to the resident if the resident's hospital stay is less than or equal to 15 consecutive days regardless whether the nursing facility is eligible for payment for hospital reserved beds under subparagraph (b)(1)(i).

(2) *Therapeutic leave*. A resident receiving nursing facility services is eligible for a maximum of 30 days per calendar year of therapeutic leave outside the nursing facility if the leave is included in the resident's plan of care and is ordered by the attending physician. The Department will pay a nursing facility the nursing facility's current per diem rate on file with the Department for a therapeutic leave day.

§ 1187.112. (Reserved).

CHAPTER 1189. COUNTY NURSING FACILITY SERVICES

Subchapter E. PAYMENT CONDITIONS, LIMITATIONS AND ADJUSTMENTS

§ 1189.103. Limitations on payment for reserved beds.

(a) A county facility may be eligible for payments for a reserved bed when the resident is absent from the nursing facility for a continuous 24-hour period because of hospitalization or therapeutic leave. A county nursing facility shall record each reserved bed for therapeutic leave on the nursing facility's daily census record and MA invoice. When the bed reserved for a resident who is hospitalized is temporarily occupied by another resident, a county nursing facility shall record the occupied bed on the nursing facility's daily MA census record and the MA invoice. During the reserved bed period the same bed shall be available for the resident upon the resident's return to the nursing facility.

(b) The following limits on payment for reserved bed days apply:

(1) *Hospitalization*.

(i) A resident receiving nursing facility services is eligible for a maximum of 15 consecutive reserved bed days per hospitalization. The Department will pay a county nursing facility at a rate of 1/3 of the county nursing facility's current per diem rate on file with the Department for a hospital reserved bed day.

(ii) A county nursing facility's overall occupancy must meet the occupancy requirements in this subparagraph. For each rate quarter, the criteria for meeting the overall occupancy limits will be calculated and applied to the rate quarter based on the highest of the overall occupancy calculated for three picture dates. The three picture dates will be the picture date for the current rate quarter (July 1 rate quarter—February 1 picture date; October 1 rate quarter—May 1 picture date; January 1 rate quarter—August 1 picture date; and April 1 rate quarter—November 1 picture date) and the two picture dates directly preceding this picture date. Overall occupancy for each picture date will be calculated by dividing the total number of assessments listed in the facility's CMI report for the picture date by the number of the facility's certified beds on file with the Department on the picture date. The highest of the results will be used to determine whether the county nursing facility meets the overall occupancy criteria set forth as follows:

(A) During rate year 2009-2010, the county nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurred must be equal or exceed 75%.

(B) Beginning with rate year 2010-2011 and thereafter, the county nursing facility's overall occupancy rate for the rate quarter in which the hospital reserved bed day occurs must equal or exceed 85%.

(iii) County nursing facilities not submitting a valid CMI report for the three picture dates do not meet the criteria for payment for reserved bed days, unless subparagraph (iv) applies.

(iv) New county nursing facilities are eligible for payment for reserved bed days as set forth in subparagraph (i) until CMI Reports for the three picture dates used to calculate overall occupancy as set forth in subparagraph (ii) are available for the rate quarter.

(v) If the resident's hospital stay exceeds 15 consecutive days, the county nursing facility shall readmit the resident to the nursing facility upon the first availability of a bed in the county nursing facility if, at the time of readmission, the resident requires the services provided by the county nursing facility.

(vi) If the resident's hospital stay is less than or equal to 15 consecutive days, the county nursing facility shall readmit the resident to the same bed the resident occupied before the hospital stay regardless whether the county nursing facility is eligible for payment for hospital reserved beds under subparagraph (b)(1)(ii), if, at the time of readmission, the resident requires the services provided by the nursing facility.

(vii) Hospital reserved bed days may not be billed as therapeutic leave days and may not be billed to the resident if the resident's hospital stay is less than or equal to 15 consecutive days regardless whether the county nursing facility is eligible for payment for hospital reserved beds under subparagraph (b)(1)(ii).

(2) *Therapeutic leave.* A resident receiving nursing facility services is eligible for a maximum of 30 days per calendar year of therapeutic leave outside the county nursing facility if the leave is included in the resident's plan of care and is ordered by the attending physician. The Department will pay a county nursing facility the county nursing facility's current per diem rate on file with the Department for a therapeutic leave day.

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