

## §411.1

custodial care or as not reasonable and necessary.

411.408 Refunds of amounts collected for physician services not reasonable and necessary, payment not accepted on an assignment-related basis.

AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

SOURCE: 54 FR 41734, Oct. 11, 1989, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting part 411 appear at 60 FR 45370, Aug. 31, 1995.

## Subpart A—General Exclusions and Exclusion of Particular Services

### §411.1 Basis and scope.

(a) *Statutory basis.* Sections 1814(a) and 1835(a) of the Act require that a physician certify or recertify a patient's need for home health services but, in general, prohibit a physician from certifying or recertifying the need for services if the services will be furnished by an HHA in which the physician has a significant ownership interest, or with which the physician has a significant financial or contractual relationship. Sections 1814(c), 1835(d), and 1862 of the Act exclude from Medicare payment certain specified services. The Act provides special rules for payment of services furnished by the following: Federal providers or agencies (sections 1814(c) and 1835(d)); hospitals and physicians outside of the U.S. (sections 1814(f) and 1862(a)(4)); and hospitals and SNFs of the Indian Health Service (section 1880 of the Act). Section 1877 of the Act sets forth limitations on referrals and payment for designated health services furnished by entities with which the referring physician (or an immediate family member of the referring physician) has a financial relationship.

(b) *Scope.* This subpart identifies:

(1) The particular types of services that are excluded;

(2) The circumstances under which Medicare denies payment for certain services that are usually covered; and

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(3) The circumstances under which Medicare pays for services usually excluded from payment.

[54 FR 41734, Oct. 11, 1989, as amended at 60 FR 41978, Aug. 14, 1995; 60 FR 45361, Aug. 31, 1995; 66 FR 952, Jan. 4, 2001]

### §411.2 Conclusive effect of QIO determinations on payment of claims.

If a utilization and quality control quality improvement organization (QIO) has assumed review responsibility, in accordance with part 466 of this chapter, for services furnished to Medicare beneficiaries, Medicare payment is not made for those services unless the conditions of subpart C of part 466 of this chapter are met.

### §411.4 Services for which neither the beneficiary nor any other person is legally obligated to pay.

(a) *General rule.* Except as provided in §411.8(b) (for services paid by a governmental entity), Medicare does not pay for a service if—

(1) The beneficiary has no legal obligation to pay for the service; and

(2) No other person or organization (such as a prepayment plan of which the beneficiary is a member) has a legal obligation to provide or pay for that service.

(b) *Special conditions for services furnished to individuals in custody of penal authorities.* Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met:

(1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody.

(2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.