

#### § 489.34

beneficiary (or his or her representative) are more expensive than, or in excess of, services covered under Medicare—

(1) A provider may charge the beneficiary an amount that does not exceed the difference between—

(i) The provider's customary charges for the services furnished; and

(ii) The provider's customary charges for the kinds and amounts of services that are covered under Medicare.

(2) A provider may not charge for the services unless they have been requested by the beneficiary (or his or her representative) nor require a beneficiary to request services as a condition of admission.

(3) To avoid misunderstanding and disputes, a provider must inform any beneficiary who requests a service for which a charge will be made that there will be a specified charge for that service.

(b) *Services not requested by the beneficiary.* For special provisions that apply when a provider customarily furnishes more expensive services, see § 413.35 of this chapter.

[45 FR 22937, Apr. 4, 1980, as amended at 51 FR 34833, Sept. 30, 1986]

#### § 489.34 Allowable charges: Hospitals participating in State reimbursement control systems or demonstration projects.

A hospital receiving payment for a covered hospital stay under either a State reimbursement control system approved under 1886(c) of the Act or a demonstration project authorized under section 402(a) of Pub. L. 90-248 (42 U.S.C. 1395b-1) or section 222(a) of Pub. L. 92-603 (42 U.S.C. 1395b-1 (note)) and that would otherwise be subject to the prospective payment system set forth in part 412 of this chapter may charge a beneficiary for noncovered services as follows:

(a) For the custodial care and medically unnecessary services described in § 412.42(c) of this chapter, after the conditions of § 412.42(c)(1) through (c)(4) are met; and

(b) For all other services in accordance with the applicable rules of this subpart C.

[54 FR 41747, Oct. 11, 1989]

#### 42 CFR Ch. IV (10-1-11 Edition)

#### § 489.35 Notice to intermediary.

The provider must inform its intermediary of any amounts collected from a beneficiary or from other persons on his or her behalf.

#### Subpart D—Handling of Incorrect Collections

#### § 489.40 Definition of incorrect collection.

(a) As used in this subpart, “incorrect collections” means any amounts collected from a beneficiary (or someone on his or her behalf) that are not authorized under subpart C of this part.

(b) A payment properly made to a provider by an individual not considered entitled to Medicare benefits will be deemed to be an “incorrect collection” when the individual is found to be retroactively entitled to benefits.

#### § 489.41 Timing and methods of handling.

(a) *Refund.* Prompt refund to the beneficiary or other person is the preferred method of handling incorrect collections.

(b) *Setting aside.* If the provider cannot refund within 60 days from the date on the notice of incorrect collection, it must set aside an amount, equal to the amount incorrectly collected, in a separate account identified as to the individual to whom the payment is due. This amount incorrectly collected must be carried on the provider's records in this manner until final disposition is made in accordance with the applicable State law.

(c) *Notice to, and action by, intermediary.* (1) The provider must notify the intermediary of the refund or setting aside required under paragraphs (a) and (b) of this section.

(2) If the provider fails to refund or set aside the required amounts, they may be offset against amounts otherwise due the provider.

#### § 489.42 Payment of offset amounts to beneficiary or other person.

(a) In order to carry out the commitment to refund amounts incorrectly collected, CMS may determine that amounts offset in accordance with § 489.41 are to be paid directly to the