
42 C.F.R. § 405.502

Criteria for determining reasonable charges.

- (a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:
- (1) The customary charges for similar services generally made by the physician or other person furnishing such services.
 - (2) The prevailing charges in the locality for similar services.
 - (3) In the case of physicians' services, the prevailing charges adjusted to reflect economic changes as provided under § 405.504 of this subpart.
 - (4) In the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services), the inflation-indexed charge as determined under § 405.509.
 - (5) [Reserved]
 - (6) In the case of medical services, supplies, and equipment (including equipment servicing) that the Secretary judges do not generally vary significantly in quality from one supplier to another, the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality.
 - (7) Other factors that may be found necessary and appropriate with respect to a category of service to use in judging whether the charge is inherently reasonable. This includes special reasonable charge limits (which may be either upper or lower limits) established by CMS or a carrier if it determines that the standard rules for calculating reasonable charges set forth in this subpart result in the grossly deficient or excessive charges. The determination of these limits is described in paragraphs (g) and (h) of this section.
 - (8) In the case of laboratory services billed by a physician but performed by an outside laboratory, the payment levels established in accordance with the criteria stated in § 405.515.
 - (9) Except as provided in paragraph (a)(10) of this section, in the case of services of assistants-at-surgery as defined in § 405.580 in teaching and non-teaching settings, charges that are not more than 16 percent of the prevailing charge in the locality, adjusted by the economic index, for the surgical procedure performed by the primary surgeon. Payment is prohibited for the services of an assistant-at-surgery in surgical procedures for which CMS has determined that assistants-at-surgery on average are used in less than 5 percent of such procedures nationally.
 - (10) In the case of services of assistants at surgery that meet the exception under § 415.190(c)(2) or (c)(3) of this chapter because the physician is performing a unique, necessary, specialized medical service in the total care of a patient during surgery, reasonable charges consistent with prevailing practice in the carrier's service

area rather than the special assistant at surgery rate.

- (b) *Comparable services limitation.* The law also specifies that the reasonable charge cannot be higher than the charge applicable for a comparable service under comparable circumstances to the carriers' own policyholders and subscribers.
- (c) *Application of criteria.* In applying these criteria, the carriers are to exercise judgment based on factual data on the charges made by physicians to patients generally and by other persons to the public in general and on special factors that may exist in individual cases so that determinations of reasonable charge are realistic and equitable.
- (d) *Responsibility of Administration and carriers.* Determinations by carriers of reasonable charge are not reviewed on a case-by-case basis by the Centers for Medicare & Medicaid Services, although the general procedures and performance of functions by carriers are evaluated. In making determinations, carriers apply the provisions of the law under broad principles issued by the Centers for Medicare & Medicaid Services. These principles are intended to assure overall consistency among carriers in their determinations of reasonable charge. The principles in §§ 405.503 through 405.507 establish the criteria for making such determinations in accordance with the statutory provisions.
- (e) *Determination of reasonable charges under the End-Stage Renal Disease (ESRD) Program—(1) General.* Reasonable charges for renal-related items and services (furnished in connection with transplantation or dialysis) must be related to costs and allowances that are reasonable when the treatments are furnished in an effective and economical manner.

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