costs and Medicare reimbursement rates. Based on an analysis of payments to a number of high CHAMPUS volume psychiatric hospitals, the Comptroller General concluded "The hospitals made large profits, on average, on CHAMPUS patients." GAO Report #1, p. 7.

A similar pattern emerges on payment rates for RTCs. Using fiscal year 1991 data, the Comptroller General compared CHAMPUS payments to stateauthorized daily rates for a number of RTCs in Florida and Virginia, and found that the average daily CHAMPUS rate was 36 percent more than the average state rate. RTC cost data were available for three RTCs in Texas, the state with the highest total CHAMPUS RTC costs. These data showed "an average profit margin of 27 percent." Id., p. 8. The Comptroller General also stated that the index factor used to annually update CHAMPUS RTC per diems, the consumer price index for urban medical services (CPI-U), results in excessive increases. The GAO Report says the hospital market basket index factor that CHAMPUS and Medicare use for hospital payments "would be more appropriate than the CPI–U because it reflects increases in the amounts hospitals pay for goods and services' rather than "increases in charges by health practitioners and facilities." Id.

The problem of excessive payments also involves substance use disorder rehabilitation facilities, which continue to be paid by CHAMPUS billed charges. According to the Comptroller General:

These facilities set their own fees and can increase them freely—without controls over their charges. Some of the facilities are paid more on a daily basis than are psychiatric hospitals. *Id.*

Based on these findings, the Comptroller General recommended that the Secretary of Defense:

Establish a system of reimbursing psychiatric facilities, RTCs, and specialized treatment facilities based on a cost-based system similar to Medicare, adjusted appropriately for differences in beneficiary demographics, rather than the present per diem or billed charges system.

Id., p. 10.

Under the proposed rule, CHAMPUS payments to specialty psychiatric hospitals and units and residential treatment facilities would have gradually transitioned from the present system of per diem rates based on historical billed charges to a new system of per diem rates based on detailed facility cost reports. Comments from providers and the professional community pointed out the significant administrative complexity and costs associated with payments based on cost reporting. They proposed alternatives

premised on adjustments to the current system. We have been persuaded by these comments and have made adjustments to current payment structures which, although not based on detailed facility cost reports, move CHAMPUS reimbursement rates significantly closer to the costs of delivering care in mental health facilities. This rule is based on the legal authority of 10 USC 1079(j)(2) which authorizes CHAMPUS to adopt payment methods for institutional providers similar to those applicable to Medicare. Under the final rule, CHAMPUS payments to specialty psychiatric hospitals and units will remain at FY95 rates for a two-year period beginning in FY96. Additionally, effective [insert 30 days after date of publication], the cap on per diem rates for these hospitals and units will be reduced from the current 80th percentile to the 70th percentile of all CHAMPUS base year charges in high volume hospitals. In FY98, payments will again be updated using the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System.

With respect to RTCs, the rule makes similar adjustments to current payment methodologies. Per diem rates will remain at FY95 rates during fiscal years 1996 and 1997 and will be subject to a cap set at the 70th percentile of all CHAMPUS RTC per diem rates. RTCs with FY95 payment rates below the 30th percentile of all RTC CHAMPUS per diem rates will be exempt from the two year freeze in rates, instead continuing the current methodology for annual updates, up to the 30th percentile rate. Beginning in FY 1998, payment updates for all RTCs will be based on the Medicare update factor used for hospitals and units exempt from Medicare's Prospective Payment System.

We estimate that payment methodologies under this rule will lead to aggregate expenditures which approximate average costs in psychiatric hospitals and units. While cost data are not generally available for RTCs, we estimate that under this rule, aggregate expenditures for RTC care will move closer to the level of average facility costs. We expect that over the next two years, we will obtain more data on actual RTC costs that will facilitate an assessment of whether additional regulatory changes should be considered.

With respect to substance use disorder rehabilitation facilities, this rule includes services provided by these facilities under the CHAMPUS DRGbased payment system. Currently, most substance use disorder rehabilitation

services reimbursed by CHAMPUS are provided by facilities covered by the CHAMPUS DRG system or mental health per diem system. Only a small portion are provided by facilities that continue to be paid on the basis of billed charges. Under Medicare, these facilities are covered by the Medicare Prospective Payment System. Based on these factors, we believe inclusion of services provided by substance use disorder rehabilitation facilities should be included with the similar services already covered by the CHAMPUS DRGbased payment system. Partial hospitalization for substance use disorder rehabilitation will be reimbursed in the same manner as psychiatric partial hospitalization programs and the rates will be frozen at the FY95 level for fiscal years 1996 and 1997.

The payment system changes appear at the proposed revisions to section 199.14.

IV. Other Provisions of Rule

A. Therapeutic Leave of Absence Days

Currently, DoD pays RTCs for days a patient is away from the facility on an approved therapeutic leave of absence. The payment amount is 100% of the normal per diem for the first three days and 75% for additional days. It is our view that current rates are not justified by any costs to the facility. In addition, we are aware of no other public payer that pays for leave days. Therefore, for care provided on or after July 1, 1995, this rule eliminates payment for days in which patients are on leave from the residential treatment center. We received a number of comments objecting to this on the grounds that therapeutic leave of absence are an important part of therapy, and should be recognized in reimbursement for services. We agree that therapeutic leaves are an important component in the patient's overall treatment plan. However, because payment rates to RTCs under this rule will probably remain above average costs, we believe they will be sufficient to cover facility costs associated with reserving space for the patient's return. This change applies only to RTCs; in psychiatric hospitals, substance use disorder rehabilitation facilities and partial hospitalization programs, leave days are not reimbursed by CHAMPUS.

B. Reversing Incentive for Inpatient Care

Another of the recommendations of the Comptroller General was to "reverse the financial incentives to use inpatient care by introducing larger copayments for CHAMPUS inpatient care." GAO