

period from July 1, 2003 through September 30, 2003.

The calculation of the fixed-loss amount is dependent in part on the LTC-DRG relative weights because the fixed-loss amount is set so that estimated total outlier payments are estimated to be equal to 8 percent of total LTCH PPS payments. We are proposing to calculate a fixed-loss amount that would result in total estimated outlier payments being equal to 8 percent of total LTCH PPS payments for the proposed 2004 LTCH PPS rate year, using the LTC-DRG relative weights based on the version 20.0 GROUPER. We are proposing to use the version 20.0 GROUPER in determining the fixed-loss amount for the period of July 1, 2003 through June 30, 2004 as it contains the best available data at the time the fixed-loss amount is determined.

As we discuss below, we are not proposing to change the fixed-loss amount to account for changes in the version 21.0 GROUPER because we believe implementing two fixed-loss amounts would be administratively burdensome. Implementing a single fixed-loss amount which would be in effect for a full 12 months (July through June) would be consistent with other components of the LTCH PPS, such as the standard Federal rate and the wage index, both of which would be in effect for a full 12-month period (July through June). Similarly, the relative weights and the GROUPER program are in effect for 12 months (October through September). However, because the update to the ICD-9-CM codes, as described in section IV.E.2. of this proposed rule, is effective at the beginning of the Federal fiscal year, we will continue to update the GROUPER and the relative weights on October 1. Furthermore, we do not anticipate that the fixed-loss amount calculated using the relative weights based on the version 20.0 GROUPER would be significantly different from a fixed-loss amount calculated using the relative weights based on the version 21.0 GROUPER. We believe this based on the fact that the LTCH PPS outlier policy, one component of which is a fixed-loss amount, was based on the IPPS outlier policy. The annual reclassification and recalibration of DRGs under the IPPS generally does not result in a significant impact on the IPPS fixed-loss amount (although this impact would vary from year to year depending on the actual DRG changes). Therefore, as explained above, we are proposing to calculate a single fixed-loss amount for each LTCH PPS rate year based on the version of the

GROUPER that is in effect as of July 1 of that year.

Since the proposed effective date of the updated LTCH PPS standard Federal rate would be July 1, while the updated GROUPER would not be effective until October 1, we did consider an alternative proposal that would establish two separate fixed-loss amounts: one for July through September based on the current GROUPER and another for October through June based on the updated GROUPER. We decided not to propose this alternative because, as we discussed above, calculating and implementing two fixed-loss amounts in one proposed LTCH PPS rate year is administratively burdensome.

As we stated in the August 30, 2002 final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529 and discussed in section VI. of this preamble) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC-DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for short-stay outlier in the proposed 2004 LTCH PPS rate year, the high-cost outlier payment would be based on 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the proposed fixed-loss amount of \$19,978 and the amount paid under the short-stay outlier policy).

Under existing regulations at § 412.525(a) (as established in the August 30, 2002 LTCH PPS final rule (67 FR 56026)), we specify that no retroactive adjustment will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. This policy is consistent with the existing outlier payment policy for short-term acute care hospitals under the IPPS. However, we note that in the proposed rule on March 4, 2003, we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because, as we discussed in that notice, we became aware that payment vulnerabilities exist in the current IPPS outlier policy.

Because the LTCH PPS high-cost outlier and short-stay policies are modeled after the outlier policy in the

IPPS, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 4, 2003 proposed rule, we are proposing under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(m), that for LTCHs any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio for the period during which the discharge occurs. As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change. In addition, we are proposing to make a similar change in § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(m), to indicate that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs.

In addition, because we currently use cost-to-charge ratios based on the latest settled cost report, again consistent with the policy for acute care hospitals under the IPPS, any dramatic increases in charges during the payment year are not reflected in the cost-to-charge ratios when making outlier payments. Consistent with the proposed policy change for acute care hospitals under the IPPS at proposed § 412.84(i) discussed in the March 4, 2003 proposed rule, because a LTCH has the ability to increase its outlier payments through a dramatic increase in charges and because of the lag time in the data used to calculate cost-to-charge ratios, we are proposing that fiscal intermediaries would use more recent data when determining a LTCH's cost-to-charge ratio. Therefore, under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(i), we are proposing that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later. In addition, we are proposing to make a similar change in § 412.529(c)(4)(ii), by cross-referencing proposed § 412.84(i), to indicate that subject to the proposed provisions in the regulations at § 412.84(i), fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later.