

estimated to be greater than 1.0 percent. Other than the LTCH whose bed size is unknown, LTCHs with 200 or more beds have the highest estimated percent change in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year (1.6 percent), while LTCHs with between 50–74 beds have the lowest projected increase in the percent change in payments per discharge percent from FY 2003 compared to the proposed 2004 LTCH PPS rate year (0.6 percent). (See Table VII.)

5. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other prospective payment systems, we estimate that Medicare spending (total Medicare program payments) for LTCH services over the next 5 years would be as follows:

Proposed LTCH PPS rate year	Estimated payments (\$ in billions)
2004	\$2.17
2005	2.29
2006	2.42
2007	2.56
2008	2.71

These estimates are based on the current estimate of increase in the excluded hospital market with capital basket of 2.5 percent for proposed 2004 LTCH PPS rate year (adjusted to account for the proposed change in the rate update cycle discussed in section VI.B.1.b. of the preamble of this proposed rule), 3.1 percent for proposed 2005 LTCH PPS rate year, 3.0 percent for proposed 2006 LTCH PPS rate year, 2.9 percent for proposed 2007 LTCH PPS rate year, and 3.0 percent for proposed 2008 LTCH PPS rate year. We currently estimate that there would be an increase in Medicare beneficiary enrollment of 1.3 percent in proposed 2004 LTCH PPS rate year, 1.6 percent in proposed 2005 LTCH PPS rate year, 1.9 percent in proposed 2006 LTCH PPS rate year, 2.0 percent in proposed 2007 LTCH PPS rate year, 2.1 percent in proposed 2008 LTCH PPS rate year, and an estimated increase in the total number of LTCHs. Consistent with the statutory requirement for budget neutrality, we intend for estimated aggregate payments under the LTCH PPS in FY 2003 to equal the estimated aggregate payments that would be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations uses the best available data and necessarily reflects assumptions. As we collect data from

LTCHs, we will monitor payments and evaluate the ultimate accuracy of the assumptions used to calculate the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent the assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations are based.

Section 123 of Pub. L. 106–113 and section 307 of Pub. L. 106–554 provide the Secretary with extremely broad authority in developing the LTCH PPS, including the authority for appropriate adjustments. In accordance with this broad authority, we may discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH PPS rates to maintain budget neutrality so that the effect of the difference between actual payments and estimated payments for the first year of LTCH PPS is not perpetuated in the PPS rates for future years. As the LTCH PPS was only implemented for cost reporting periods beginning on or after October 1, 2002, we do not yet have sufficient data to determine whether such an adjustment is warranted.

6. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals will receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services will enhance the efficiency of the Medicare program.

C. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

XIV. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the DATES section of this preamble and respond to those comments in the preamble to that rule.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

In accordance with the discussion in this preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 412, as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

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

2. Section 412.22 is amended by revising paragraph (h)(2) and adding a new paragraph (h)(6) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) *Satellite facilities.* * * *

(2) Except as provided in paragraphs (h)(3) and (h)(6) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the prospective payment systems for any period:

* * * * *

(6) The provisions of paragraph (h)(2)(i) of this section do not apply to any long-term care hospital that is subject to the long-term care hospital prospective payment system under Subpart O of this part, effective for cost reporting periods occurring on or after October 1, 2002, and that elects to be paid based on 100 percent of the Federal prospective payment rate as specified in § 412.533(c), beginning with the first cost reporting period following that election, or to a new long-term care hospital, as defined in § 412.23(e)(4).

3. Section 412.503 is amended by adding a definition of “long-term care hospital prospective payment system rate year” in alphabetical order to read as follows:

§ 412.503 Definitions.

* * * * *

Long-term care hospital prospective payment system rate year means the 12-month period of July 1 through June 30.

* * * * *

4. Section 412.523 is amended by revising paragraphs (c)(3) and (d)(3) to read as follows: