

calculation can be completed for the development of the final FY 2004 prospective payment rates to be published by August 1, 2003.

If a hospital disagreed with the fiscal intermediary's resolution of a policy issue (for example, whether a general category of cost is allowable in the wage data), the hospital could have contacted CMS in an effort to resolve the issue. We note that the April 4, 2003 deadline also applied to these requests. Requests were required to be sent to CMS at the address below (with a copy to the hospital's fiscal intermediary). The request must have fully documented all attempts by the hospital to resolve the dispute through the process described above, including copies of relevant correspondence between the hospital and the fiscal intermediary. During review, we do not consider issues such as the adequacy of a hospital's supporting documentation, as we believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of these types of issues (which should have been resolved earlier in the process).

Hospitals should also examine Table 2 in the Addendum to this proposed rule to verify their data. Table 2 contains each hospital's adjusted average hourly wage used to construct the wage index values for the past 3 years, including the FY 2000 data used to construct the proposed FY 2004 wage index. We note that the hospital average hourly wages shown in Table 2 only reflect changes made to a hospital's data and transmitted to CMS prior to February 18, 2003.

We will release a final wage data file in May 2003 to hospital associations and the public on the Internet at <http://www.cms.hhs.gov/providers/hipps/default.asp>. The May 2003 public use file will be made available solely for the limited purpose of identifying any potential errors made by CMS or the fiscal intermediary in the entry of the final wage data that result from the correction process described above (revisions submitted to CMS by the fiscal intermediaries by April 4, 2003). If, after reviewing the May 2003 final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or CMS error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and CMS that outlines why the hospital believes an error exists and provide all supporting information, including relevant dates (for example, when it first became aware of the error).

CMS and the fiscal intermediaries must receive these requests no later than

June 6, 2003. Requests mailed to CMS should be sent to: Centers for Medicare & Medicaid Services, Center for Medicare Management, Attention: Wage Index Team, Division of Acute Care, C4-07-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Each request also must be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact CMS immediately to discuss its findings.

At this point in the process, that is, after the release of the May 2003 wage index file, changes to the hospital wage data will only be made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor CMS will approve the following types of requests:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to CMS by fiscal intermediaries on or before April 4, 2003.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2003 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 6, 2003) will be incorporated into the final wage index in the final rule to be published by August 1, 2003, and to be effective October 1, 2003.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2004 payment rates. Accordingly, hospitals that did not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to challenge later, before the Provider Reimbursement Review Board, the failure of CMS to make a requested data revision (*See W. A. Foote Memorial Hospital v. Shalala*, No. 99-CV-75202-DT (E.D. Mich. 2001)).

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals will have access to the final wage data

by early May 2003, they will have the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2004 wage index by August 1, 2003, and the implementation of the FY 2004 wage index on October 1, 2003. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index for an area only if a hospital can show that the intermediary or CMS made an error in tabulating its data. This provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As described earlier, the requesting hospital must show that it could not have known about the error, or that it did not have the opportunity to correct the error, before the publication of the FY 2004 wage index. As indicated earlier, since a hospital will have the opportunity to verify its data, and the fiscal intermediary will notify the hospital of any changes, we do not expect that midyear corrections will be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value will be effective prospectively from the date the correction is approved.

H. Modification of the Process and Timetable for Updating the Wage Index

Although the wage data correction process described in section III.G. of this preamble has proven successful in the past for ensuring that the wage data used each year to calculate the wage indexes are generally reliable and accurate, we continue to be concerned about the growing volume of wage data revisions initiated by hospitals after the release of the first public use file in February. This issue has been discussed previously in the FY 1998 IPPS proposed rule (62 FR 29918) and in the FY 2002 IPPS proposed rule (66 FR 22682). In each discussion, we describe the increasing number of revisions to wage data between the proposed rule and the final rule.

Currently, the fiscal intermediaries are required to conduct initial desk reviews on or before November 15 in advance of the preparation of the preliminary wage data public use file in early January (see Program