

60 percent of the amount that will be calculated under the reasonable cost-based payment system for that specific LTCH and 40 percent of the Federal prospective payment amount.

- The 5-year phase-in of the adjustment for differences in area wage levels under § 412.525(c) will not be affected because they are linked to the start of each LTCH's cost reporting period, rather than to the start of the Federal fiscal year. For cost reporting periods that began on or after October 1, 2002, and before September 30, 2003, the applicable LTCH PPS wage index is one-fifth of the full LTCH wage index value, and for cost reporting periods beginning on or after October 1, 2003, and before September 30, 2004, the applicable LTCH PPS wage index is two-fifths of the full LTCH wage index value.

- The LTC-DRGs and their relative weights and the GROUPER will not be affected since they will continue to be updated effective October 1 through September 30 each year based on the changes to the DRGs published in the IPPS final rule.

We received eight comments regarding our proposal to change the effective date of the annual update for the LTCH PPS from October 1 to July 1 of each year.

*Comment:* Two commenters supported the establishment of the LTCH PPS rate year, but suggested that publishing the final rule each year by May 1, rather than by June 1 would allow LTCHs additional time for adjustments to their payment systems.

*Response:* We thank the commenters for endorsing the establishment of the revised LTCH PPS rate year. In changing the effective date of the LTCH PPS rate year update and the resulting publication dates of the proposed and final regulations for the system, we stated that this shift in the schedule would promote "administrative feasibility and efficiency," by avoiding concurrent rulemaking and publishing with the IPPS final rule. As we have already noted, section 1886(e)(5)(A) of the Act requires that, for the IPPS, the proposed rule be published in the **Federal Register** "not later than the April 1 before each fiscal year; and the final rule, not later than the August 1 before such fiscal year," but no similar requirement is imposed on the LTCH PPS.

Publishing a final rule annually by May 1 in order to allow 60-days between publication and effective date of the LTCH PPS rate update does not invalidate our stated objectives. Therefore, we will revise the regulations to require publication of the final LTCH

rule by May 1 of each year unless for "good cause" we are unable to publish by that date, but before June 1. (We note that "good cause" used in this context is not coextensive and is broader than the "good cause" standard used in the Administrative Procedures Act (A.P.A.) at 5 U.S.C. section 553(d)(3).)

*Comment:* Several commenters took issue with the proposed change in the effective date of the annual update for the LTCH PPS from October 1 to July 1 of each year while still retaining the October 1 effective date for updating LTC-DRG classifications and weights. They believe that this policy change will be burdensome to LTCHs, requiring two separate updates during one cost reporting period as well as increased systems costs. These commenters urged us to remain with the existing update and publication schedule and some suggested deferring the change until full implementation of the LTCH PPS in FY 2006. One commenter raised the issue that this "fragmentary" implementation of individual updates will increase potential payment calculation errors for LTCHs. Another commenter urged us to pay LTCHs as a "pass through" for any expenses that they incur in complying with the new regulations, should they be made final.

One commenter stated that administrative feasibility and efficiency at CMS did not justify burdening LTCHs in this manner. One of the commenters asserted that the costs for updating LTCH billing systems to accommodate this change in the LTCH PPS rate year will have a considerable impact on LTCHs as Small Businesses and, therefore, should have been reviewed under the A.P.A. and the Regulatory Flexibility Act (RFA).

*Response:* In response to these commenters, we first want to establish the fact that we have no requirement that LTCHs maintain payment systems or coding software in order to be paid under the LTCH PPS. We understand that it is common for many hospitals, consultants, and industry associations to do so, but we believe that some of the commenters who oppose the proposed change in the LTCH PPS rate year for the LTCH PPS to July 1 through June 30 while retaining October 1 through September 30 for the LTC-DRG update are oversimplifying what presently exists from a systems standpoint. Currently, all providers with cost reporting periods beginning in any month other than October already are subject to two separate updates. In addition, rate changes may occur during the fiscal year because of Congressional action for services rendered "on or after" the date that the rate change was

effective. Additionally, ongoing audit and review procedures, provider-generated appeals procedures, and either administrative or judicial decisions also can produce hospital-level rate changes not associated with the start of a Federal fiscal year.

As noted above, we do not require providers to process claims or to determine LTC-DRG assignments, but should a LTCH or any other group choose to duplicate the PRICER software that is required for fiscal intermediaries, or the GROUPER software that we use, it is an individual business determination.

We primarily want to remind the commenters that the determination of Medicare payments based on submitted claims is solely a responsibility of each fiscal intermediary. Since payments to LTCHs will be based on claims processing done by fiscal intermediaries, we do not understand one commenter's assertion that we should not implement this policy because one of the payment consequences in establishing the LTCH PPS rate year will be to cause potential calculation errors by LTCHs.

Nowhere in our regulations are LTCHs required to maintain the systems capability to calculate payments. Therefore, although individual LTCHs and other groups may elect, for their own purposes, to purchase software packages in order to duplicate work done by our contractors, we do not agree that those costs should be paid as a pass-through by us. Moreover, we continue to believe that since the start of cost reporting periods for many LTCHs, as well as acute care hospitals, have not generally coincided with the October starting date of the Federal fiscal year, those hospitals that choose to have their own payment software are very familiar with the virtually seamless routine of inputting new numbers to their existing systems when a final rule is published. We do not believe that this policy will be unduly burdensome to such LTCHs. We also point out to the commenters that with publication of the proposed rule on March 7, 2003, we have complied with the A.P.A. As to the RFA, as stated in the proposed rule (68 FR 11259), this rule would not have a significant impact on small entities (this includes small businesses).

In response to the two comments suggesting that we delay implementation of this policy until full phase-in of the LTCH PPS in FY 2006, based on our evaluation of the above comments, we do not believe that such a decision is warranted.

*Comment:* One commenter suggested that if we found it necessary to