

proposed rule (68 FR 11253), we proposed that fiscal intermediaries would use either the most recently settled cost report or most recent tentative settled cost report, whichever is later, in determining a LTCH's cost-to-charge ratio used in determining short-stay outlier payments. We also proposed, in that same proposed rule, that the applicable statewide average cost-to-charge ratio would only be applied when a LTCH's cost-to-charge ratio exceeds the ceiling (but not when a LTCH's cost-to-charge ratio falls below the floor). The commenters express concern that the proposed change to the short-stay outlier policy is not reflected in the proposed 2004 LTCH PPS rate year standard Federal rate and, therefore, CMS fails to maintain budget neutrality.

In addition, one of the commenters noted that the cost-to-charge ratio data posted on the web for the 2004 rate year proposed rule (published on March 7, 2003, in the **Federal Register**) differed for many LTCHs from the cost-to-charge ratio data posted on the web for the FY 2003 final rule (published August 30, 2002, in the **Federal Register**). The commenter believes that the observed change in the LTCHs' cost-to-charge ratios is due to the proposed change to allow fiscal intermediaries to use either the most recently settled cost report or most recent tentative settled cost report, whichever is later, in computing a LTCH's cost-to-charge ratio used to determine both short-stay outlier and high-cost outlier payments.

Response: The commenters have raised concerns that we have not taken into account the proposed changes to the policies for determining short-stay and high-cost outlier payments in calculating the proposed update to the standard Federal rate for the proposed 2004 LTCH PPS rate year. As we discuss in greater detail below in section VII.B.3. of this preamble, at this time, the finalized changes to the proposed high-cost outlier and short-stay outlier policies presented in the March 7, 2003, proposed rule (68 FR 11250–11253) are not yet effective. Accordingly, in establishing the final update factor for the 2004 LTCH PPS rate year in this final rule, we used the high-cost outlier and short-stay outlier policies established in the August 30, 2002, final rule (67 FR 55995–56000 and 56022–56027).

Nevertheless, based on the comments, there appears to be a misconception among the commenters regarding the methodology for updating the LTCH PPS standard Federal rate. While we are not finalizing the proposed changes to the outlier policies in this final rule, we

believe that it is important to clarify the methodology used in the March 7, 2003, proposed rule to determine the proposed update factor for the proposed 2004 LTCH PPS rate year.

In the August 30, 2002, final rule, we established at § 412.523(c)(3)(ii) that for fiscal years after FY 2003, we update the standard Federal rate annually to adjust for the most recent estimate of the projected increases in prices for LTCH inpatient hospital services. That is, for years after FY 2003, the annual update to the LTCH PPS standard Federal rate will be equal to the percentage change in the excluded hospital with capital market basket.

In determining the proposed update for the proposed 2004 LTCH PPS rate year, we adjusted the projected proposed LTCH market basket increase in order to maintain budget neutrality (in addition to an adjustment to account for the transition to the proposed change in the LTCH PPS rate year) by accounting for the estimated increase in payments during the remainder of FY 2003 (July 1, 2003, through September 30, 2003) that would result from updating the factors and rates 3 months early (July 1, 2003, instead of October 1, 2003). This budget neutrality adjustment to the proposed rate update included the effect of the proposed increase in the LTCH PPS standard Federal rate, the effect of proposed change in the wage index values, and the effect of the proposed change in the short-stay outlier policy and high-cost outlier policy (specifically the elimination of assigning the statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor).

As we discussed in the March 7, 2003, proposed rule (68 FR 11251), in calculating short-stay outlier and high-cost outlier payments we currently use cost-to-charge ratios based on the latest available cost report data from HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000. In some cases the latest available cost report data from HCRIS is from settled cost reports; however, in other instances, the latest available cost report data from HCRIS is from "as submitted" cost reports. Since the universe of LTCHs is relatively small and the substantial increase in the number of LTCHs is fairly recent, due to the lag time in the cost report settlement and the availability of cost report data in HCRIS, we used cost-to-charge ratios based on as submitted cost report data if settled cost report data were not available. Since, as we noted above, the data used to compute LTCH cost-to-charge ratios was generated prior to the implementation of the LTCH PPS (when

the use of charges was not as germane), we believe that the difference between a LTCH's cost-to-charge ratio computed from the latest settled cost report and a LTCH's cost-to-charge ratio computed from the latest tentative settled cost report is immaterial for most LTCHs, and, therefore, would not have a significant impact on payment estimates.

The commenter is mistaken as to the reason behind the change in the cost-to-charge ratio data posted on the web from the FY 2003 final rule (published August 30, 2002, in the **Federal Register**) to the 2004 LTCH PPS rate year proposed rule (published on March 7, 2003, in the **Federal Register**). As discussed above, this change in LTCHs' cost-to-charge ratios is not a result of applying the proposed change to allow fiscal intermediaries to use either the most recently settled cost report or most recent tentative settled cost report, whichever is later, in determining a LTCH's cost-to-charge ratio. We note instead that the change in the LTCH cost-to-charge ratios observed by the commenter is a result of using more updated data between the development of the August 30, 2002, final rule and the March 7, 2003, proposed rule. For example, LTCHs that previously only had FY 1998 data available for the FY 2003 final rule may now have FY 1999 or FY 2000 data available. Similarly, LTCHs that previously only had as submitted cost report data available for the FY 2003 final rule may now have settled cost report data available. Therefore, we do not believe that a change in our methodology for updating the standard Federal rate for the 2004 LTCH PPS rate year is warranted.

In this final rule, we updated the current standard Federal rate (\$34,956.15) established in the August 30, 2002, final rule (67 FR 56033) by 2.2 percent (2.5 percent minus 0.3 percent) for discharges paid under the LTCH PPS that occur on or after July 1, 2003, through June 30, 2004. This update represents the most recent estimate of the increase in the excluded hospital with capital market basket for the 2004 LTCH PPS rate year, adjusted to account for the change in the rate update cycle to July 1, and is based on the best available data for 194 LTCHs.

2. Standard Federal Rate for the 2004 LTCH PPS Rate Year

In the August 30, 2002, LTCH PPS final rule (67 FR 56033), we established a standard Federal rate of \$34,956.15 based on the best available data and policies established in that final rule. In the March 7, 2003, proposed rule (68 FR 11248), for the proposed 2004 LTCH