

recommendation and we are not revising the phase-in to the wage index adjustment in this final rule.

Section 412.525(c) provides that the adjustment to account for differences in area wage levels is made by multiplying the labor-related portion of the Federal rate by the appropriate wage index value for the area in which the LTCH is physically located. In the August 30, 2002, final rule (67 FR 56018), based on the best available data at that time, we stated that the wage index adjustment is based on the FY 2002 inpatient acute care hospital wage index data without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act. In the March 7, 2003, proposed rule, for the 2004 LTCH PPS rate year, we proposed that the wage index adjustment provided for under § 412.525(c) be based on the most recent available acute care hospital inpatient wage data, that is, the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassification under section 1886(d)(8) and section 1886(d)(10) of the Act. As we noted above, we proposed that the 5-year phase-in of the wage index adjustment would not be affected by the proposed change in the LTCH PPS rate update cycle and will continue to be based on the Federal fiscal year. However, we proposed to update the data used to compute the annual wage index values on the 2004 LTCH PPS rate year cycle (July through June).

*Comment:* A few commenters stated that our proposal to update the data used to compute wage index values according to the LTCH PPS rate year (July 1st) would cause LTCHs whose cost reporting periods do not align with the LTCH rate year to have to make two wage index changes per year during the 5-year phase-in of the wage index adjustment. In addition to increasing provider burden, the commenters stated that two wage index changes per year would also introduce the potential for payment calculation errors. Thus, the commenters recommend that we align the phase-in of the wage index adjustment and the update of the data used to compute the wage index values to coincide with the LTCH PPS rate year.

*Response:* Adopting the recommendation of the commenters to align the phase-in of the wage index adjustment with the LTCH PPS rate year (July 1st) would advance the 5-year phase-in of the wage index adjustment. For instance, if the phase-in of the wage index adjustment were to change for all LTCHs on July 1st (rather than, as

required under current language, for cost-reporting periods beginning on or after October 1st each year during the 5-year phase-in period), LTCH's with an April 1st cost reporting period would receive payments based on 1/5th of the wage index value for only 3 months (April 1, 2003, through June 30, 2003) before changing to 2/5th of the wage index on July 1, 2003. As we discussed in the August 30, 2002, final rule (67 FR 56018), based on the latest available LTCH data, we did not find any statistical evidence that showed a significant relationship between LTCHs' costs and their geographic location, therefore, we believed that it was appropriate to transition to a full wage index adjustment over a 5-year period.

As we discussed in the March 7, 2003, proposed rule and as we noted above, because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of the appropriateness of adjusting the phase-in. However, for this final rule we again reviewed the most recent data available and we still did not find any evidence to support a change in the 5-year phase-in of the wage index. Therefore, as stated above, we are not revising the phase-in of the wage index adjustment.

Moreover, we believe it is inappropriate to accelerate the phase-in of the wage index adjustment by adopting the commenters' recommendation to align the phase-in of the wage index adjustment with the LTCH PPS rate year. As we noted above, in accordance with § 412.525(c), the labor-related portion of the Federal rate is adjusted by the applicable wage index value. Because the proposed labor-related share (72.612 percent) is lower than the existing labor-related share (72.885 percent) established in the August 30, 2002, final rule, LTCHs with a wage index of less than 1.0 would be disadvantaged by the acceleration of the phase-in of the wage index adjustment that would result if we were to align the phase-in of the wage index adjustment with the LTCH PPS rate year.

In addition, we do not believe that the application of two wage index changes per year during the 5-year phase-in of the wage index adjustment, for those LTCHs whose cost reporting periods do not align with the LTCH rate year, would result in an additional burden or in payment errors to LTCHs. We do not believe LTCHs would be additionally burdened because they are not required to provide any additional information due to the change in the wage index adjustment during their cost reporting period. Also, we do not believe payment

errors will occur because both the wage index data and the phase-in of the wage index adjustment are automatically performed in the PRICER software used by fiscal intermediaries to price each LTCH claim based on the date of service.

Therefore, we are not adopting the commenters' suggestion to align the phase-in of the wage index adjustment and the update of the data used to compute the wage index values to coincide with the LTCH PPS rate year. The phase-in of the wage index adjustment will continue to remain linked to each LTCH's cost reporting period beginning on or after October 1st each year during the 5-year phase-in period and the update of the data used to compute the wage index values will correspond with the LTCH PPS rate year (that is, effective beginning on July 1st each year).

For example, for a LTCH with a cost reporting period from January 1, 2003, through December 31, 2003, the LTCH will be paid using one-fifth of the wage index value for its entire cost reporting period. For the first 6 months of that period (January 1, 2003, through June 30, 2003), the one-fifth wage index value will be based on the same data used to compute the FY 2002 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act as established in the August 30, 2002, final rule (67 FR 56018) and shown in Tables 1 and 2 of the Addendum to that same final rule (67 FR 56057–56075). Under the policy we are establishing in this final rule to update the data used to compute the LTCH PPS wage index values for July 1, 2003, through June 30, 2004, for the next 6 months (July 1, 2003, through December 31, 2003) that LTCH will still be paid using one-fifth of the wage index value, but the wage index value will now be computed using the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections 1886(d)(8) and (d)(10) of the Act (as shown in Tables 1 and 2 of the Addendum to this final rule). In this example, for that LTCH's subsequent cost reporting period from January 1, 2004, through December 31, 2004, that LTCH will be paid using the two-fifth wage index value. For the first 6 months of that period (January 1, 2004, through June 30, 2004), the two-fifths wage index value will be based on the same data used to compute the FY 2003 acute care hospital inpatient wage index without taking into account geographic reclassifications under sections