

IPPS operating and capital cost-to-charge ratio ceiling for LTCHs is appropriate since, as we explained in the August 30, 2002, final rule (67 FR 55960), LTCHs are certified as acute care hospitals that meet the criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program, and in general, hospitals are paid as a LTCH only because their Medicare average length of stay is greater than 25 days in accordance with § 412.23(e). In the March 7, 2003, proposed rule (68 FR 11251), we also explained that prior to qualifying as a LTCH under § 412.23(e)(2)(i), the hospitals generally are paid as acute care hospitals under the IPPS during the period in which they demonstrate that they have an average length of stay of greater than 25 days. Accordingly, if a LTCH's cost-to-charge ratio is above this ceiling, we proposed to assign the applicable IPPS statewide average cost-to-charge ratio. We also proposed to assign the applicable statewide average for LTCHs for which we are unable to compute a cost-to-charge ratio, such as for new LTCHs. Therefore, based on the proposed methodology and data described above, in the March 7, 2003, proposed rule (68 FR 11251), for the proposed 2004 LTCH PPS rate year, we proposed a fixed-loss amount of \$19,978. Thus, we proposed to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC-DRG and the proposed fixed-loss amount of \$19,978).

We received numerous comments on the proposed changes to the LTCH PPS high-cost outlier policy under proposed § 412.525(a) (and short-stay outlier policy under § 412.529(c)). Because many features of the proposed LTCH PPS high-cost outlier policy are based upon the proposed policy changes to the IPPS high-cost outlier policy, we believe it is appropriate to finalize the proposed changes to the LTCH PPS high-cost outlier policy together with the final policy decisions on the IPPS high-cost outlier policy. Because the existing LTCH PPS outlier policy and proposed outlier policy changes are modeled after the IPPS outlier policy, we include the summary of public comments submitted on behalf of LTCHs, which in many cases mirror the comments we received on the proposed changes to the IPPS outlier policy, and the responses to those comments in the IPPS high-cost outlier final rule. Please refer to that final rule for a full discussion of the comments and responses, as well as any other final policy decisions concerning

LTCH PPS high-cost outlier policy under § 412.525(a) (and the short-stay outlier policy under § 412.529(c)).

Therefore, in this final rule in calculating the final fixed-loss amount for the 2004 LTCH PPS rate year since the finalized changes to the high-cost outlier policy (and short-stay outlier policy) are not yet effective, we applied the existing outlier policy; that is, we assigned the statewide average to LTCHs whose cost-to-charge ratios fell below the floor or exceeded the ceiling. Accordingly, we used the current IPPS combined operating and capital cost-to-charge ratio floor of 0.206 and cost-to-charge ratio ceiling of 1.421 (as explained in the IPPS final rule (67 FR 50125, August 1, 2002)). We believe that using the current combined IPPS operating and capital cost-to-charge ratio floor and ceiling for LTCHs is appropriate for the same reasons we stated above regarding the use of the current combined operating and capital cost-to-charge ratio ceiling under the IPPS.

In this final rule, for the 2004 LTCH PPS rate year, we continue to use the March 2002 update of the FY 2001 MedPAR claims data to establish a fixed-loss threshold that would result in outlier payments projected to be equal to 8 percent of total payments, based on the policies described in this final rule, because these data are the best LTCH data available. We also computed cost-to-charge ratios for establishing the fixed-loss amount for the 2004 LTCH PPS rate year based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000. As we explained above, the applicable IPPS statewide average cost-to-charge ratios were applied when a LTCH's cost-to-charge ratio exceeded the ceiling (1.421) or fell below the floor (0.206). Also, we assigned the applicable statewide average to LTCHs for which we were unable to compute a cost-to-charge ratio. (Currently, the applicable IPPS statewide averages can be found in Tables 8A and 8B of the August 1, 2002, IPPS final rule (67 FR 50263).)

Accordingly, based on updated data and the final rates and policies established in this final rule (including the existing cost-to-charge ratio policy described above), we are establishing a fixed-loss amount of \$19,590 for the FY 2004 LTCH PPS rate year. Thus, we will pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the LTC-DRG and the fixed-loss amount of \$19,590).

As we discussed in the March 7, 2003, proposed rule (68 FR 11251–11252), the IPPS standard Federal rate and relative weights are updated simultaneously, effective October 1 of each year, when the new GROUPER with the final DRGs and the new relative weights are implemented for that fiscal year. The LTCH PPS utilizes the same DRGs and Medicare GROUPER program as the IPPS. The GROUPER in effect on July 1, 2003, will be version 20.0. Although we proposed to update the LTCH PPS standard Federal rate on July 1, 2003, version 21.0 of the GROUPER will not be available at the time this final rule is published. Therefore, as we explained in the March 7, 2003, proposed rule (68 FR 11242), we are not proposing an update to the LTC-DRG weights for the period of July 1, 2003, through September 30, 2003, and the LTCH PPS will continue to use version 20.0 of the GROUPER and the LTC-DRG relative weights published in Table 3 of the Addendum to the August 30, 2002, final rule (reprinted in Table 3 of the Addendum to the March 7, 2003, proposed rule) for the period from July 1, 2003, through September 30, 2003.

The calculation of the fixed-loss amount is dependent in part on the LTC-DRG relative weights because the fixed-loss amount is set so that estimated total outlier payments are estimated to be equal to 8 percent of total LTCH PPS payments. We proposed to calculate a fixed-loss amount that would result in total estimated outlier payments being equal to 8 percent of total LTCH PPS payments for the proposed 2004 LTCH PPS rate year, using the LTC-DRG relative weights based on the version 20.0 GROUPER. We proposed to use the version 20.0 GROUPER in determining the fixed-loss amount for the period of July 1, 2003, through June 30, 2004, as it contains the best available data at the time the fixed-loss amount is determined.

As we discuss below, we did not propose to change the fixed-loss amount to account for changes in the version 21.0 GROUPER, because we believe implementing two fixed-loss amounts during the proposed LTCH PPS rate year may be administratively burdensome. Implementing a single fixed-loss amount which would be in effect for a full 12 months (July through June) would be consistent with other components of the LTCH PPS, such as the standard Federal rate and the wage index, both of which would be in effect for a full 12-month period (July through June). Similarly, the relative weights and the GROUPER program are in effect for 12 months (October through September). However, because the