

update to the ICD-9-CM codes is effective at the beginning of the Federal fiscal year, as described in section IV.E.2. of the March 7, 2003, proposed rule (68 FR 11241), we explained in that same proposed rule (68 FR 11252) that we would continue to update the LTCH PPS GROUPER and the relative weights on October 1.

In addition, in the March 7, 2003, proposed rule (68 FR 11252), we also stated that we do not anticipate that the fixed-loss amount calculated using the relative weights based on the version 20.0 GROUPER would be significantly different from a fixed-loss amount calculated using the relative weights based on the version 21.0 GROUPER. We believe this based on the fact that the LTCH PPS outlier policy, one component of which is a fixed-loss amount, is modeled after the IPPS outlier policy. The annual reclassification and recalibration of DRGs under the IPPS generally does not result in a significant impact on the IPPS fixed-loss amount (although this impact would vary from year to year depending on the actual DRG changes). Therefore, we proposed to calculate a single fixed-loss amount for each LTCH PPS rate year based on the version of the GROUPER that is in effect as of July 1 of that year.

Since the proposed effective date of the updated LTCH PPS standard Federal rate would be July 1, while the updated GROUPER would not be effective until October 1, we stated in the March 7, 2003, proposed rule (68 FR 11252) that we did consider an alternative proposal that would establish two separate fixed-loss amounts during the proposed LTCH PPS rate year—one for July through September based on the current GROUPER and another for October through June based on the updated GROUPER. As we explained in that same proposed rule, we decided not to propose this alternative because, as we discussed above, calculating and implementing two fixed-loss amounts in one proposed LTCH PPS rate year is administratively burdensome.

We received no comments on our proposal to calculate a single fixed-loss amount for each LTCH PPS rate year based on the version of the GROUPER that is in effect as of July 1 of that year. Therefore, for the 2004 LTCH PPS rate year, we are establishing a single fixed-loss amount based on the version 20.0 of the GROUPER, which is in effect at the start of the 2004 LTCH PPS rate year (July 1, 2003). As we stated above, the fixed-loss amount for the 2004 LTCH PPS rate year is \$19,590. As we stated in the August 30, 2002, final rule (67 FR 56026), under some rare circumstances,

a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529 and discussed in section VII.B.4.b. of this preamble) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC-DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for a short-stay outlier in the 2004 LTCH PPS rate year, the high-cost outlier payment will be 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the final fixed-loss amount of \$19,590 and the amount paid under the short-stay outlier policy).

Under existing regulations at § 412.525(a), we specify that no retroactive adjustment will be made to the outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratios and the actual cost-to-charge ratios for outlier cases. This policy is consistent with the existing outlier payment policy for acute care hospitals under the IPPS. However, we note that in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10424), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because, as we discussed in that notice, we became aware that payment vulnerabilities exist in the current IPPS outlier policy.

Because the LTCH PPS high-cost outlier and short-stay policies are modeled after the outlier policy in the IPPS, we believe they are susceptible to the same payment vulnerabilities and, therefore, merit revision. As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10429), we proposed in the March 7, 2003, proposed rule (68 FR 11252) under § 412.525(a)(4)(ii), by cross-referencing proposed § 412.84(m), that for LTCHs any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio for the period during which the discharge occurs. As is the case with the proposed changes to the outlier policy for acute care hospitals under the IPPS, we are still assessing the procedural changes that would be necessary to implement this change. In addition, in that same proposed rule (68 FR 11252), we proposed to make a

similar change to the short-stay outlier policy at proposed § 412.529(c)(4)(ii).

We also stated in the March 7, 2003, proposed rule (68 FR 11252), that because we currently use cost-to-charge ratios based on the latest settled cost report, any dramatic increases in charges during the payment year are not reflected in the cost-to-charge ratios when making outlier payments. Consistent with the proposed policy change for acute care hospitals under the IPPS at proposed § 412.84(i) discussed in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10424–10426), because a LTCH has the ability to increase its outlier payments through a dramatic increase in charges and because of the lag time in the data used to calculate cost-to-charge ratios, in the March 7, 2003, proposed rule (68 FR 11252), we proposed that fiscal intermediaries would use more recent data when determining a LTCH's cost-to-charge ratio. Therefore, by cross-referencing proposed § 412.84(i) under proposed § 412.525(a)(4)(ii) in the March 7, 2003, proposed rule (68 FR 11252), we proposed that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later. In addition, in that same proposed rule, we proposed to make a similar change to the short-stay outlier policy at proposed § 412.529(c)(4)(ii).

As we noted above, we received numerous comments on the proposed reconciliation of outlier payments at cost report settlement and the proposed policy to allow fiscal intermediaries to use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later, in computing LTCH's cost-to-charge ratios for determining high-cost outlier payments under proposed § 412.525(a) (and short-stay outlier payments under proposed § 412.529(c)). As we also noted previously, 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 together with the final policy decisions on the IPPS outlier policy. Because, however, the 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 IPPS outlier policy, and the responses to those comments in the IPPS high-cost outlier final rule. Please