

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)).

In conclusion, the summary of public comments on the proposed changes presented in the March 7, 2003, proposed rule regarding the high-cost outlier policy under proposed § 412.525(a) (and the short-stay outlier policy under proposed § 412.529(c)), and the responses to those comments are presented in the IPPS high-cost outlier final rule. Therefore, in this final rule, based on the data and existing methodology described above, we are establishing a fixed-loss amount of \$19,590 for the FY 2004 LTCH PPS rate year. Accordingly, 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).

4. Adjustments for Special Cases

a. General

As discussed in the August 30, 2002, final rule (67 FR 55995), under section 123 of Public Law 106-113, the Secretary generally has broad authority in developing the PPS for LTCHs, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs.

Generally, LTCHs, as described in section 1886(d)(1)(B)(iv) of the Act, are distinguished from other inpatient hospital settings by maintaining an average length of stay of greater than 25 days. However, LTCHs may have cases that have stays of considerably less than the average length of stay and that receive significantly less than the full course of treatment for a specific LTC-DRG. As we explained in the August 30, 2002, final rule (67 FR 55995), such cases would be paid inappropriately if the hospital were to receive the full LTC-DRG payment. While we did not propose any changes to the payment policy for special cases at this time, below we discuss the payment methodology for these special cases as implemented in the August 30, 2002, final rule (67 FR 55955-56010).

b. Short-Stay Outlier Cases

A short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged. These patients may be discharged to another site of

care or they may be discharged and not readmitted because they no longer require treatment. Furthermore, patients may expire early in their LTCH stay.

As noted above, generally LTCHs are defined by statute as having an average length of stay of greater than 25 days. We believe that a payment adjustment for short-stay outlier cases results in more appropriate payments, because these cases most likely would not receive a full course of treatment in such a short period of time and a full LTC-DRG payment may not always be appropriate. Payment-to-cost ratios simulated for LTCHs, for the cases described above, show that if LTCHs receive a full LTC-DRG payment for those cases, they would be significantly "overpaid" for the resources they have actually expended.

Under § 412.529, we adjust the per discharge payment to the least of 120 percent of the cost of the case, 120 percent of the LTC-DRG specific per diem amount multiplied by the length of stay of that discharge, or the full LTC-DRG payment, for all cases with a length of stay up to and including five-sixths of the geometric average length of stay of the LTC-DRG.

As we discussed in the March 7, 2003, proposed rule (68 FR 12252), 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 March 7, 2003, proposed rule, we became aware that payment vulnerabilities exist in the current IPPS outlier policy. As we also explained in that March 7, 2003, proposed rule, because the LTCH PPS high-cost outlier and short-stay outlier 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(i) and (m) in the March 5, 2003, IPPS high-cost outlier proposed rule (68 FR 10429), and as we proposed above for high-cost outlier payments at § 412.525(a)(4)(ii), we proposed under § 412.529(c) that short-stay outlier payments would be subject to the proposed provisions in the regulations at proposed § 412.84(i) and (m). Therefore, consistent with the proposed changes to the high-cost outlier policy discussed in the March 7, 2003, proposed rule (68 FR 11251), we proposed, by cross-referencing proposed § 412.84(i), that fiscal intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later, in

determining a LTCH's cost-to-charge ratio.

In the March 7, 2003, proposed rule (68 FR 11253), we also proposed, by cross-referencing proposed § 412.84(i), that the applicable statewide average cost-to-charge ratio would only be applied when a LTCH's cost-to-charge ratio exceeds the ceiling. Thus, the applicable statewide average cost-to-charge ratio would not be applied if a LTCH's cost-to-charge ratio falls below the floor. Finally, in that same proposed rule, by cross-referencing proposed § 412.84(m), we proposed that any reconciliation of payments for short-stay outliers would be made upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs. We also noted that, 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.

As we discussed above in section VII.B.3 of this preamble, we received numerous comments on the proposed changes to the short-stay outlier policy under proposed § 412.529(c) (and the high-cost outlier policy under proposed § 412.525(a)). Because many features of the proposed LTCH PPS outlier policies 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 short-stay outlier policy (and high-cost outlier policy) together with the final policy decisions on the IPPS high-cost outlier policy. Because 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 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 (the short-stay outlier policy under § 412.529(c) and the high cost outlier policy under § 412.525(a)). Therefore, in this final rule, we are not making the changes to the short-stay outlier policy at § 412.529 based on the changes proposed in the March 7, 2003, proposed rule (68 FR 11252).

As noted above, we will be responding to all comments on the proposed outlier policies for the LTCH PPS and presenting any changes in