

based on the best available data and the policies presented in that proposed rule, we projected that approximately 49 percent of LTCHs would be paid based on 100 percent of the proposed standard Federal rate rather than receive payment under the transition blend methodology. Using the same methodology in the August 30, 2002, final rule (67 FR 56034) described above, this projection, which uses updated data and inflation factors, is based on our estimate that these LTCHs would receive higher payments based on 100 percent of the proposed standard Federal rate compared to the payments they would receive under the transition blend methodology. Similarly, we project that the remaining 51 percent of LTCHs would choose to be paid based on the transition blend methodology (80 percent of reasonable cost-based payments and 20 percent of Federal rate payments for cost reporting periods that begin during FY 2003; and 60 percent of reasonable cost-based payments and 40 percent of Federal rate payments for cost reporting periods that begin during FY 2004 (in accordance with § 412.533(a))) because they would receive higher payments than if they were paid based on 100 percent of the proposed standard Federal rate.

In the March 7, 2003, proposed rule (68 FR 11255), based on the best available data and the proposed policy revisions described in that proposed rule, we projected that the full effect of the remaining 4 years of the transition period (including the election option) would result in a cost to the Medicare program of \$300 million as follows: \$120 million in the 2004 LTCH PPS rate year; \$90 million in the 2005 LTCH PPS rate year; \$60 million in the 2006 LTCH PPS rate year; and \$30 million in the 2007 LTCH PPS rate year. Therefore, we proposed a 5.7 percent reduction (0.943) to all LTCHs' payments for discharges occurring on or after July 1, 2003, and through June 30, 2004, to account for the estimated cost of the \$120 million for the proposed 2004 LTCH PPS rate year.

As we stated above, in order to maintain budget neutrality, we indicated that we would propose a budget neutrality offset for each of the remaining years of the transition period to account for the estimated costs for the respective fiscal year. In the March 7, 2003, proposed rule (68 FR 11255), based on the best available data at that time, we proposed the following budget neutrality offsets to LTCH payments during the transition period: 4.4 percent (0.956) in proposed 2005 LTCH PPS rate year; 2.9 percent (0.971) in proposed 2006 LTCH PPS rate year; and 1.2

percent (0.988) in proposed 2007 LTCH PPS rate year.

*Comment:* One commenter recommended that the budget neutrality offsets to LTCH payments during the transition period be updated periodically and adjusted to reflect any change in the percentage of LTCHs electing to receive payments during the transition period based on 100 percent of the Federal rate as provided for under § 412.533(c).

*Response:* As we stated in the March 7, 2003, proposed rule, the proposed budget neutrality offsets to LTCH payments during the transition period are determined using the best available data. Moreover, as we stated above, we proposed to revise the estimated budget neutrality offsets to LTCH payments during the transition period for future years annually along with the update to the Federal rate based on updated data. Therefore, in determining the budget neutrality offsets to LTCH payments during the transition period in future rate years, we will use the latest data available, including data on actual elections made by LTCHs to receive payments during the transition period based on 100 percent of the Federal rate as provided for under § 412.533(c). To update the budget neutrality offsets to LTCH payments during the transition period more often than in conjunction with the annual rate update would be an administrative burden to LTCHs and us.

*Comment:* A few commenters requested clarification on how we derived the estimate that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the proposed 2004 LTCH PPS rate year. Additionally, the commenters requested an explanation of how the estimate that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the 2004 LTCH PPS rate year can be determined from the proposed rule data posted on the CMS Web site. Some commenters also requested that the data files posted on the CMS Web site be consistent in the future, that is, provide the same information and title headings. One commenter, requested that the data files posted on the CMS Web site contain an indicator of which LTCHs have elected to receive payments based on 100 percent of the standard Federal rate as provided for under § 412.533(c).

*Response:* As we discussed above, the proposed estimate that 49 percent of LTCHs would elect payment based on 100 percent of the standard Federal rate in the proposed 2004 LTCH PPS rate year was based on our estimate that those 49 percent of LTCHs (96 out of 194) would receive higher payments

based on 100 percent of the proposed standard Federal rate compared to the payments they would receive under the transition blend methodology. As we also noted above, this projection was based on the best available data and the policies presented in that proposed rule. Accordingly, in the March 7, 2003, proposed rule, when we simulated payments for each LTCH under the LTCH PPS for the proposed 2004 LTCH PPS rate year based on 100 percent of the proposed standard Federal rate, we incorporated the proposed policy changes, including the proposed standard Federal rate of \$35,726.64, the proposed fixed loss amount of \$19,978, the proposed labor-share of 72.612 percent, the proposed update of the wage index data, and the proposed elimination of the assignment of the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio fell below the floor. In estimating the payments that LTCHs would receive under the transition blend methodology, we projected the payments that each LTCH would receive during the proposed 2004 LTCH PPS rate year, if the LTCH PPS were not implemented. That is, we estimated payments based on reasonable cost-based principles in accordance with the methodology set forth in § 1886(b) of the Act.

Based on the LTCH's cost reporting period, we applied the applicable transition blend percentages for each LTCH during the proposed 2004 LTCH PPS rate year. For example, as we noted in the March 7, 2003, proposed rule (68 FR 11261), based on the transition blend percentages set forth in § 412.533(a), some providers may experience a change in the transition blend percentage during the proposed 2004 LTCH PPS rate year, such that a LTCH with an October 1, 2002, cost reporting period would have 3 months (July 1, 2003, through September 30, 2003) under the 80/20 transition blend (that is, 80 percent of payments based on reasonable cost-based principles and 20 percent based on the Federal rate) and 9 months (October 1, 2003, through June 30, 2004) of payment under the 60/40 transition blend (60 percent of payments based on reasonable cost-based principles and 40 based on the Federal rate).

If a LTCH's estimated LTCH PPS payments for the proposed 2004 LTCH PPS rate year were greater than its estimated payments under the transition period methodology for the proposed 2004 LTCH PPS rate year, then we assumed that the LTCH would elect payment based on 100 percent of the standard Federal rate for the proposed