

2004 LTCH PPS rate year. Conversely, if a LTCH's estimated payments under the transition period methodology for the proposed 2004 LTCH PPS rate year were greater than its estimated LTCH PPS payments for the proposed 2004 LTCH PPS rate year, then we assumed that the LTCH would receive payment based on the transition blend methodology set forth in § 412.533(a) for the proposed 2004 LTCH PPS rate year. However, regardless of the comparison of a LTCH's estimated LTCH PPS payments and estimated payments under the transition period methodology for the proposed 2004 LTCH PPS rate year, we also took into account whether we had previously projected that a LTCH would elect payment based on 100 percent of the standard Federal rate in the August 30, 2002, final rule. Specifically, because LTCHs subject to the LTCH PPS with cost reporting periods that began prior to start of the proposed 2004 LTCH PPS rate year (July 1, 2003) would have already notified their fiscal intermediary of their election to receive payment based on 100 percent of the Federal rate in accordance with § 412.533(c)(2), and once a LTCH makes this election it cannot revert to the transition blend (§ 412.533(a)), in our proposed rule projection, we took into account our previous projection from the August 30, 2003, final rule.

Based on the clarification of how we derived 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 provided above, the March 7, 2003, proposed rule data posted on our website could be combined with the August 30, 2002, final rule data also posted on our website to derive the estimate that that 49 percent of LTCHs would elect payment based on 100 percent of the Federal rate in the proposed 2004 LTCH PPS rate year. Specifically, the variables "Total TEFRA Payments for Impact" and "Total PPS Payments" in the August 30, 2002, final rule data file posted on our website and the variables "Estimated Total TEFRA Payment" and "Estimated Total PPS Payments (DRG + High-Cost Outlier)" in the March 7, 2003, proposed rule data file posted on our website can be used to derive 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.

In the future, we will make every attempt possible to provide the same information and title headings in the data file posted on our Web site. However, changes may be necessary in the future to reflect current policy and to more accurately reflect the data used.

For example, the August 30, 2002, final rule data files posted on our website contained the variable "Total TEFRA Payment for Budget Neutrality." As described in the corresponding file layout also posted on our Web site, in accordance with section 307 of Public Law 106-554, this variable used to determine the budget neutral standard Federal rate does not contain the increases to LTCHs' payments provided for under section 122 of Public Law 106-113 and section 307 of Public Law 106-554. However, that variable is no longer necessary since we are not required to determine the LTCH PPS Federal rate based on payments made under the reasonable cost-based methodology once the LTCH PPS is implemented (that is, for years beyond FY 2003). Since this variable was not required to determine the proposed rate and factors discussed in the March 7, 2003, proposed rule, there is no corresponding variable in the data files posted on our Web site. Additionally, as data on which LTCHs have elected to receive payments based on 100 percent of the standard Federal rate as provided for under § 412.533(c) become available in the future, we will incorporate that data in the LTCH PPS data files posted on the CMS' Web site.

*Comment:* One commenter requested clarification on why the proposed budget neutrality offsets for the transition period were increased for "fiscal years" 2004 through 2007, despite the fact the assumptions appear the same. The commenter recommends that the budget neutrality offsets for the transition period remain unchanged from those published in the August 30, 2002, final rule.

*Response:* Although the budget neutrality offsets presented in the August 30, 2002, final rule were applicable on a fiscal year basis, this is no longer true for the proposed budget neutrality offsets included in the March 7, 2003, proposed rule. The proposed budget neutrality offsets for the transition period were estimated to apply for the proposed LTCH PPS rate years 2004 through 2007, not "fiscal years" 2004 through 2007 as the commenter stated. The change in the period of time for which the proposed budget neutrality offsets for the transition period would be applicable is the primary reason why we determined the proposed budget neutrality offset for the transition period to be 5.7 percent for the proposed 2004 LTCH PPS rate year, beginning July 1, 2003, as compared to the previous estimate of 5.0 percent for FY 2004, beginning October 1, 2003 (presented in the August 30, 2002, final rule). Therefore, the change

in the budget neutrality offsets for the transition period is primarily due to moving from the Federal FY (October 1st) rate cycle to the LTCH PPS rate year (July 1st) rate cycle. As we stated in the August 30, 2002, final rule, future budget neutrality offsets for the transition period in the proposed rule will be based on the best available data. Accordingly, in determining the proposed budget neutrality offsets for the transition period, we also took into account updated data.

Therefore, we believe that the proposed budget neutrality offset for the transition period for the proposed 2004 LTCH PPS rate year is appropriate based on the data available at that time, and we are not adopting the commenter's recommendation that the budget neutrality offsets for the transition period remain unchanged from those published in the August 30, 2002, final rule. Instead, in this final rule, we are revising the budget neutrality offsets for the transition period for the 2004 LTCH PPS rate year based on the same methodology established in the August 30, 2002, final rule, while using the best available data, and applying the offset to the 2004 LTCH PPS rate year.

In this final rule, for the 2004 LTCH PPS rate year, based on the best available data and the policies established in this final rule, we project that approximately 49 percent of LTCHs will 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 described in the August 30, 2002, final rule (67 FR 56034), this projection, which uses updated data and inflation factors, is based on our estimate that either—(1) a LTCH has already elected payment based on 100 percent of the Federal rate prior to July 1, 2003, or (2) a LTCH will receive higher payments based on 100 percent of the 2004 LTCH PPS rate year standard Federal rate compared to the payments it would receive under the transition blend methodology. Similarly, we project that the remaining 51 percent of LTCHs will choose to be paid based on the transition blend methodology (80 percent of reasonable cost-based payments and 20 percent of the Federal rate for cost reporting periods beginning during FY 2003 and 60 percent of reasonable cost-based payments and 40 percent of the Federal rate for cost reporting periods beginning during FY 2004 in accordance with § 412.533(a)) because they will receive higher payments than if they were paid based on 100 percent of the 2004 LTCH PPS rate year standard Federal rate. We note that, as discussed in the March 7,