

2003, proposed rule (68 FR 11256–11257), we did not propose to change the 5-year transition period set forth in § 412.533(a) in conjunction with the proposed change in the proposed 2004 LTCH PPS rate year update. Therefore, the applicable transition blend percentage will apply for a LTCH's entire cost reporting period beginning on or after October 1 (unless the LTCH elects payment based on 100 percent of the Federal rate).

In this final rule, based on the best available data and the final policy revisions described above, we projected that the full effect of the remaining 4 years of the transition period (including the election option) will result in a cost to the Medicare program of \$310 million as follows:

| LTCH PPS rate year | Estimated cost (in millions) |
|--------------------|---------------------------------|
| 2004 | \$120 |
| 2005 | 100 |
| 2006 | 60 |
| 2007 | 30 |

Therefore, using the methodology established in the August 30, 2002, final rule (67 FR 56034) based on updated data and the final policies and rates established in this final rule, we are establishing a 6.0 percent reduction (0.940) to all LTCHs' payments for discharges subject to the LTCH PPS occurring on or after July 1, 2003, and through June 30, 2004, to account for the estimated cost of the election of the \$120 million for the proposed 2004 LTCH PPS rate year. This offset has increased slightly over the estimate in the proposed rule (5.7 percent) primarily due to slightly higher projections of reasonable cost-based payment based on the latest available data. In addition, as we stated in the March 7, 2003, proposed rule (68 FR 12255), we emphasize that the budget neutrality offset to account for the transition methodology is calculated based on and effective for payments made for discharges occurring during the 2004 LTCH PPS rate year of July 1, 2003, through June 30, 2004, not the Federal FY 2004 of October 1, 2003, through September 30, 2004.

As we discussed in the August 30, 2002, final rule (67 FR 56036), consistent with the statutory requirement for budget neutrality in section 123(a)(1) of Public Law 106–113, we intended for estimated aggregate payments under the LTCH PPS to equal the estimated aggregate payments that would be made if the LTCH PPS was not implemented. Our methodology for estimating payments for purposes of the

budget neutrality calculations use the best available data at that time and necessarily reflect assumptions. As the LTCH PPS progresses, we are monitoring payment data and will evaluate the ultimate accuracy of the assumptions used in the budget neutrality calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS) described in the August 30, 2002, final rule (67 FR 56027–56037). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the budget neutrality calculations were based.

Section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provides broad authority to the Secretary in developing the LTCH PPS, including the authority for appropriate adjustments. Under this broad authority, as implemented in the regulations at § 412.523(d)(3), we have provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years.

In the August 30, 2002, final rule (67 FR 56037), we estimated that total Medicare program payments for LTCH services over 5 years would be \$1.59 billion for FY 2003; \$1.69 billion for FY 2004; \$1.79 billion for FY 2005; \$1.90 billion for FY 2006; and \$2.00 billion for FY 2007. In the March 7, 2003, proposed rule (68 FR 12255), based on the best available data, we estimated that total Medicare program payments for LTCH services for the proposed LTCH PPS rate years of 2004 through 2008 would be:

| LTCH PPS rate year | Estimated payments (\$ in billion) |
|--------------------|---------------------------------------|
| 2004 | \$2.17 |
| 2005 | 2.29 |
| 2006 | 2.42 |
| 2007 | 2.56 |
| 2008 | 2.71 |

At this time, based on the most recent and best available data, these estimates of Medicare program payments for LTCH services for the LTCH PPS rate years of 2004 through 2008 remain unchanged from those estimates presented in the proposed rule. Therefore, in this final rule, we continue to estimate that Medicare program payments for LTCH services for the

LTCH PPS rate years of 2004 through 2008 will be approximately \$12.2 billion as shown above.

In accordance with the methodology established in the August 30, 2002, final rule (67 FR 56037), these estimates are based on the projection that 49 percent of LTCHs will elect to be paid based on 100 percent of the 2004 LTCH PPS rate year standard Federal rate rather than the transition blend, and an update of our estimate of 2004 LTCH PPS rate year payments to LTCHs using our Office of the Actuary's most recent estimate (based on updated data) of the excluded hospital with capital market basket of 2.5 percent for the 2004 LTCH PPS rate year (adjusted to account for the proposed change in the rate update cycle discussed in section VII.B.1.b. of this preamble), 3.2 percent for the 2005 LTCH PPS rate year, 3.1 percent for the 2006 and 2007 LTCH PPS rate years, and 3.0 percent for the 2008 LTCH PPS rate year. We also took into account our Office of the Actuary's projection that there would be an increase in Medicare beneficiary enrollment of 1.3 percent in the 2004 LTCH PPS rate year, 1.6 percent in the 2005 LTCH PPS rate year, 1.9 percent in the 2006 LTCH PPS rate year, 2.0 percent in the 2007 LTCH PPS rate year, and 2.1 percent in the 2008 LTCH PPS rate year.

Because the LTCH PPS was only recently implemented, sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, in the March 7, 2003, proposed rule (68 FR 11256), we did not propose an adjustment for budget neutrality under § 412.523(d)(3) at this time. However, we stated that we will continue to collect and interpret new data as the data become available in the future to determine if such an adjustment should be proposed.

Comment: A few commenters expressed concern that the retroactive one-time budget neutrality adjustment at § 412.523(d)(3) would wrongly penalize LTCHs for a CMS calculation error, thereby, weakening the intent and value of the PPS design. The commenters believe that the proposed rule lacks detail about the methodology CMS will use to implement this adjustment and requests that CMS publish the data and methodology used to assess compliance with the budget neutrality mandate under section 123 of Public Law 106–113 established in regulations at § 412.523(d)(3). In addition, one commenter states that if the Congress intended CMS to “reduce” future payments based on a one-time budget neutrality adjustment, the Congress would have specified this