

intent more clearly in the statutory or report language.

Response: As we discussed in greater detail in the August 30, 2002, final rule, section 123(a)(1) of Public Law 106–113 requires the Secretary to develop a DRG-based PPS for LTCHs and “shall maintain budget neutrality.” As we stated in that same final rule (67 FR 56036), in implementing the LTCH PPS in FY 2003 we intended for estimated aggregate payments under the LTCH PPS to equal the estimated aggregate payments that would have been made if the LTCH PPS had not been implemented. Moreover, section 123 of Public Law 106–113 and section 307 of Public Law 106–554 provide 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 of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years. This adjustment would not be “retroactive” as stated by the commenters; therefore, we do not believe that the one-time budget neutrality adjustment at § 412.523(d)(3) would wrongly penalize LTCHs for any calculation errors. Instead, as noted above, this adjustment is necessary so that any errors in the original budget neutrality calculations would not be perpetuated in the LTCH PPS rates for future years.

Furthermore, as we stated in the August 30, 2002, final rule (67 FR 56036–56037), if a one-time budget neutrality adjustment were proposed in the future under § 412.523(d)(3), the standard Federal rate may either increase or decrease depending on the difference between actual payments and estimated payments under the LTCH PPS.

As we also stated in the August 30, 2002, final rule (67 FR 56036–56037), when estimating payments for the purposes of the budget neutrality calculations in implementing the LTCH PPS for FY 2003, we used the best available data and any assumptions. As we explained in that same final rule, the actual data and the assumptions include inflation factors, intensity of services provided, and behavioral responses to the implementation of the LTCH PPS. To the extent that these data or assumptions significantly differ from actual experience, actual payments under the LTCH PPS may be higher or lower than the estimates on which the

budget neutrality calculations were based, and a one-time prospective budget neutrality adjustment may be necessary to prevent perpetuating any errors in the budget neutrality calculations in future years. If in the future (but prior to October 1, 2006) after monitoring LTCH PPS payment data we believe that the assumptions used to determine the budget neutrality calculations differ significantly from actual experience, we would first propose an appropriate adjustment and publish the details of our findings in a future **Federal Register** document. At that time, we would also discuss the data and methodology used to determine the proposed one-time budget neutrality offset provided for under § 412.523(d)(3).

As we stated in the March 7, 2003, proposed rule, 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 a one-time prospective adjustment for budget neutrality under § 412.523(d)(3) at that time. However, we will continue to collect and interpret new data as the data becomes available in the future to determine if such an adjustment should be proposed. Therefore, at this time we are not making a one-time prospective adjustment for budget neutrality as provided for under § 412.523(d)(3).

VIII. Computing the Adjusted Federal Prospective Payments

In accordance with § 412.525 and as discussed in section VII. of this final rule, the standard Federal rate is adjusted to account for differences in area wages by multiplying the labor-related share of the standard Federal rate by the appropriate LTCH PPS wage index. The standard Federal rate is also adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the standard Federal rate by the appropriate adjustment factor shown in Table V in section VII.C.2. of this preamble. In the March 7, 2003, proposed rule (68 FR 11248), we proposed a standard Federal rate of \$35,726.64 for the proposed 2004 LTCH PPS rate year. In this final rule, based on the best available data and the finalized policies present in this final rule, we are establishing a standard Federal rate of \$35,892.41 for the 2004 LTCH PPS rate year. We illustrate the methodology used to adjust the Federal

prospective payments in the following example:

During the 2004 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago, Illinois (MSA 1600) with a two-fifths wage index value of 1.0418 (see Table 1 in the Addendum to this final rule). The Medicare patient is classified into LTC–DRG 4 (Spinal Procedures), which has a relative weight of 1.2493 (see Table 3 of the Addendum to this final rule). To calculate the LTCH’s total adjusted Federal prospective payment for this Medicare patient, we compute the wage-adjusted Federal prospective payment amount by multiplying the unadjusted standard Federal rate (\$35,892.41) by the labor-related share (72.885 percent) and the wage index (1.0418). This wage-adjusted amount is then added to the nonlabor-related portion of the unadjusted standard Federal rate (27.115 percent) to determine the adjusted Federal rate, which is then multiplied by the LTC–DRG relative weight (1.2493) to calculate the total adjusted Federal prospective payment for the 2004 LTCH PPS rate year (\$45,992.49). In addition, as discussed in section VII.C.6. of this preamble, for the 2004 LTCH PPS rate year, we are reducing the LTCH PPS payment by 6.0 percent for the budget neutrality offset to account for the costs of the transition methodology. The following illustrates the components of the calculations in this example:

Unadjusted Standard Federal Prospective Payment Rate	\$35,726.18
Labor-Related Share	0.72885
Labor-Related Portion of the Federal Rate	= \$26,039.03
2/5th Wage Index (MSA 1600)	1.0418
Wage-Adjusted Labor Share	= \$27,127.46
Nonlabor-Related Portion of the Federal Rate (adjusted for COLA if applicable)	+ \$9,687.15
Adjusted Federal Rate	= \$36,814.61
LTC–DRG 4 Relative Weight	× 1.2493
Total Adjusted Federal Prospective Payment (Before the Budget Neutrality Offset)	= \$45,992.49
Budget Neutrality Offset	× 0.940
Total Federal Prospective Payment (With the Budget Neutrality Offset)	= \$43,232.94

IX. Transition Period

To provide a stable fiscal base for LTCHs, under § 412.533, we implemented a 5-year transition period from reasonable cost-based reimbursement under the TEFRA system to a prospective payment based