

We have examined this final rule under the criteria set forth in Executive Order 13132 and have determined that, based on the 9 State and local LTCHs in our database, this final rule will not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law.

#### *B. Anticipated Effects*

We discuss the impact of this final rule below in terms of its fiscal impact on the Medicare budget and on LTCHs.

##### 1. Budgetary Impact

Section 123(a)(1) of Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) requires us to set the payment rates contained in this final rule such that total payments under the LTCH PPS are projected to equal the amount that would have been paid if this PPS had not been implemented. However, as discussed in greater detail in the August 30, 2002, final rule (67 FR 56033–56036), the FY 2003 standard Federal rate (\$34,956.15) was calculated as though all LTCHs will be paid based on 100 percent of the standard Federal rate in FY 2003. As discussed in section VII.C.6 of this final rule, we are applying a budget neutrality offset to payments to account for the monetary effect of the 5-year transition period and the policy to permit LTCHs to elect to be paid based on 100 percent of the standard Federal rate rather than a blend of Federal prospective payments and reasonable cost-based payments during the transition. The amount of the offset is equal to 1 minus the ratio of the estimated reasonable cost-based payments that would have been made if the LTCH PPS had not been implemented, to the projected total Medicare program payments that will be made under the transition methodology and the option to elect payment based on 100 percent of the Federal prospective payment rate.

Our Office of the Actuary computed an update factor to update LTCH PPS payments from the current rate period (Federal FY 2003) to the new 2004 LTCH PPS rate year (July 1, 2003, through June 30, 2004). The 2004 LTCH PPS rate year overlaps the current rate period by 3 months (July 1, 2003, through September 30, 2003). The market basket increase for Federal FY 2003 is currently estimated at 3.7 percent and the most recent estimate of the LTCH PPS market basket increase for the 2004 LTCH PPS rate year is estimated at 2.5 percent (as discussed in section VII.B.1.b of this preamble).

Therefore, over the period from FY 2002 through the 2004 LTCH PPS rate year (June 30, 2004), the cumulative increase would be 6.0 percent ( $1.037 * 1.025 = 1.063$ ). This cumulative increase matches (within rounding) the cumulative increase calculated by using the index level in the new effective period and the index level in FY 2002, such that having two separate updates result in the same cumulative update as if we had used a single update for the entire 21-month period (October 1, 2002, through June 30, 2004). Thus, the change to the 2004 LTCH PPS rate update cycle will not result in a higher or lower update than would have been the case (except due to rounding) if no change had been made to the LTCH PPS update cycle. In addition, as discussed in section VII.B.1.b. of the preamble of this final rule, we apply a budget neutrality adjustment of 0.997 in determining the standard Federal rate to account for the estimated \$5.68 million budgetary impact for the Medicare program in FY 2003 as a result of the change to the 2004 LTCH PPS rate year cycle.

##### 2. Impact on Providers

The basic methodology for determining a LTCH PPS payment is set forth in the regulations at § 412.515 through § 412.525. In addition to the basic LTC–DRG payment (standard Federal rate  $\times$  LTC–DRG relative weight), we make adjustments for differences in area wage levels, cost-of-living adjustment for Alaska and Hawaii, and short-stay outliers. In addition, LTCHs may also receive high-cost outlier payments for those cases that qualify under the threshold established each rate year. Section 412.533 provides for a 5-year transition to fully prospective payments from payment based on reasonable cost-based principles. During the 5-year transition period, payments to LTCHs are based on an increasing percentage of the LTCH PPS Federal rate and a decreasing percentage of payment based on reasonable cost-based principles. Section 412.533(c) provides for a one-time opportunity for LTCHs to elect payments based on 100 percent of the LTCH PPS Federal rate.

In order to understand the impact of the changes to the LTCH PPS discussed in this final rule on different categories of LTCHs for the 2004 LTCH PPS rate year, it is necessary to estimate payments per discharge under the current (Federal FY 2003) LTCH PPS rates and factors (see the August 30, 2002, final rule) and payments per discharge that will be made under the LTCH PPS rates and factors for the 2004

LTCH PPS rate year (July 1, 2003, through June 30, 2004). We also evaluated the percent change in payments per discharge of estimated FY 2003 prospective payments to estimated 2004 LTCH PPS rate year payments for each category of LTCHs.

Hospital groups were based on characteristics provided in OSCAR data and FYs 1998 through 2000 cost report data from HCRIS. Hospitals with incomplete characteristics were grouped into the “unknown” category. Hospital groups include:

- Location: Large Urban/Other Urban/Rural
- Participation Date
- Ownership Control
- Census Region
- Bed Size

To estimate the impacts among the various categories of providers during the transition period, it is imperative that reasonable cost-based principle payments and prospective payments contain similar inputs. More specifically, in the impact analysis showing the impact reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based principle payments and the option to elect payment based on 100 percent of the Federal rate (Table VII below), we estimated payments only for those providers for whom we are able to calculate payments based on reasonable cost-based principles. For example, if we did not have FYs 1996 through 1999 cost data for a LTCH, we were unable to determine an update to the LTCH's target amount to estimate payment under the current reasonable cost-based principles.

Using LTCH cases from the FY 2001 MedPAR file and cost data from FYs 1996 through 2000 in HCRIS to estimate payments under the current reasonable cost-based principles, we have both case-mix and cost data for 194 LTCHs. Thus, for the impact analyses reflecting the applicable transition blend percentages of prospective payments and reasonable cost-based principle payments and the option to elect payment based on 100 percent of the Federal rate (see Table VI below), we used data from 194 LTCHs. While currently there are approximately 280 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges from the MedPAR data for the 194 LTCHs in our database provide sufficient representation in the LTC–DRGs containing discharges for patients that received respiratory and ventilator-dependent care. However,