

We believe it is appropriate not to change the FY 2003 outlier threshold at this time. Although our current empirical estimate of the threshold indicates it could be slightly higher, there are other considerations that lead us to conclude the threshold should remain at \$33,560. Increasing the threshold would result in lower outlier payments for all hospitals, not just those that have been aggressively maximizing their outlier payments. Changing the threshold for the remaining few months of the fiscal year could disrupt hospitals' budgeting plans and would be contrary to the overall prospectivity of the IPPS. We do believe that we have the authority to revise the threshold, given the extraordinary circumstances that have occurred (in particular, the manipulation of the policy by some hospitals). However, in light of the relatively small difference between the current threshold and our revised estimate, and the limited amount of time remaining in the fiscal year, we have concluded it is more appropriate to maintain the threshold at \$33,560.

We note that, in the May 19, 2003, IPPS proposed rule for FY 2004, we proposed an outlier threshold of \$50,645 for FY 2004 (68 FR 27235). Because that proposed rule was published prior to the publication of this final rule, the FY 2004 outlier threshold was calculated without accounting for the changes implemented in this final rule. The changes implemented here will be reflected in the calculation of the final FY 2004 outlier threshold.

C. Provisions of the Final Rule Relating to the Fixed-Loss Outlier Threshold

We are maintaining the fixed-loss outlier threshold at \$33,560 for the remainder of FY 2003. We also are maintaining the marginal cost factor, the percentage of costs above the threshold that is paid for outlier cases, at 80 percent.

VII. Adjustment for High-Cost Outliers and Short-Stay Outliers Under the LTCH PPS

A. Background

Under the LTCH PPS, as implemented in the regulations at § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. In the LTCH PPS final rule for the 2004 LTCH PPS rate year, we intend to summarize the proposals relating to outlier payments under the LTCH PPS that were made in the March 7, 2003, LTCH PPS proposed rule (68 FR 11250), and will explain that

we have responded to comments submitted on behalf of LTCHs and finalized the LTCH PPS outlier policy in this final outlier rule. We believe it is appropriate to finalize the changes to the IPPS outlier policies and the LTCH PPS outlier policy at the same time because the LTCH PPS outlier policy is modeled after the IPPS outlier policy. Accordingly, following is a summary of the LTCH PPS outlier policy as proposed in the March 7, 2003, proposed rule and our responses to the public comments we received on that proposed rule.

Under the regulations at § 412.525(a), we make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We include a provision for outlier payments under the LTCH PPS and set the outlier threshold before the beginning of the applicable rate update year so that total outlier payments are projected to equal 8 percent of total payments under the LTCH PPS.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC-DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under an outlier policy. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. The LTCH's loss is limited to the fixed-loss amount and the percentage of costs above the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.525(a), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC-DRG and the fixed-loss amount).

We determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the hospital will receive any additional payments. We calculate the fixed-loss amount by simulating aggregate payments with and without an outlier policy. The fixed-loss amount results in

estimated total outlier payments projected to be equal to 8 percent of projected total LTCH PPS payments.

Outlier payments under the LTCH PPS are determined consistent with the IPPS outlier policy. Currently, under the IPPS, a floor and a ceiling are applied to an acute care hospital's cost-to-charge ratio and if the acute care hospital's cost-to-charge ratio is either below the floor or above the ceiling, the applicable statewide average cost-to-charge ratio is assigned to the acute care hospital. Similarly, if a LTCH's cost-to-charge ratio is below the floor or above the ceiling, currently the applicable statewide average cost-to-charge ratio is assigned to the hospital. In addition, for LTCHs for which we are unable to compute a cost-to-charge ratio, we also assign the applicable statewide average. Currently, MedPAR claims data and cost-to-charge ratios based on the latest available cost report data from the Hospital Cost Report Information System (HCRIS) and corresponding MedPAR claims data are used to establish a fixed-loss threshold amount under the LTCH PPS.

B. Establishment of the Fixed-Loss Amount for Outlier Payments Under the LTCH PPS

For FY 2003, based on FY 2001 MedPAR claims data and cost-to-charge ratios based on the latest available data from HCRIS and corresponding MedPAR claims data from FYs 1998 and 1999, we established a fixed-loss amount of \$24,450. In the March 7, 2003, proposed rule, for the 2004 LTCH PPS rate year, we proposed to continue to use the March 2002 update of the FY 2001 MedPAR claims data to determine a fixed-loss threshold that would result in outlier payments projected to be equal to 8 percent of total payments, based on the policies described in that proposed rule, because these data were the best data available. We calculated cost-to-charge ratios for determining the March 7, 2003, proposed fixed-loss amount based on the latest available cost report data in HCRIS and corresponding MedPAR claims data from FYs 1998, 1999, and 2000.

Consistent with the proposed outlier policy changes for acute care hospitals under the IPPS discussed in the March 5, 2003, proposed rule (68 FR 10420), in the March 7, 2003, LTCH PPS proposed rule, we proposed to no longer assign the applicable statewide average cost-to-charge ratio when a LTCH's cost-to-charge ratio falls below the floor. We proposed this policy change because, as is the case for acute care hospitals, we believe LTCHs could arbitrarily increase their charges in order to maximize