

intermediaries would use either the most recent settled cost report or the most recent tentative settled cost report, whichever is later.

In the March 7, 2003, LTCH PPS proposed rule, when we calculated the proposed fixed-loss amount of \$19,978 for the proposed 2004 LTCH PPS rate year, we did not assign the applicable statewide average cost-to-charge ratio when a LTCH's actual cost-to-charge ratio fell below the floor, consistent with the proposed IPPS outlier policy. However, because many features of the LTCH PPS are dependent upon IPPS outlier policies, we did not believe it was appropriate to finalize the proposed changes to the LTCH PPS outlier policy in the LTCH PPS final rule. Therefore, in calculating the final fixed-loss amount, we intend to apply the existing outlier policy (that is, not the policies proposed in the March 7, 2003, LTCH PPS proposed rule), using the statewide average for LTCHs whose cost-to-charge ratios fall below the floor. In addition, after analyzing the data that we would use to calculate the fixed-loss amount, we would only apply the statewide average to one LTCH that would have a cost-to-charge ratio that falls below the floor. Based on this analysis, we have concluded that it will not be necessary to recalculate a new fixed-loss amount once this outlier rule becomes effective because the difference between a fixed-loss amount based on the elimination of the floor and a fixed-loss amount based on the statewide average would be negligible. Thus, the fixed-loss amount published in the LTCH PPS final rule will not be affected by changes in the outlier policy.

D. Application of Outlier Policy to Short-Stay Outlier Cases

Under some rare circumstances, a LTCH discharge could qualify as a short-stay outlier case (as defined under § 412.529) and also as a high-cost outlier case. In such a scenario, a patient could be hospitalized for less than five-sixths of the geometric average length of stay for the specific LTC-DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the LTCH PPS outlier threshold (that is, the short-stay outlier payment plus the fixed-loss amount), the discharge would be eligible for payment as a high-cost outlier. Thus, for a short-stay outlier case, the high-cost outlier payment is based on 80 percent of the difference between the estimated cost of the case plus the outlier threshold (the sum of the fixed-loss amount and the amount paid under the short-stay outlier policy).

E. Summary of Public Comments on the LTCH PPS Outlier Policy in the March 7, 2003, Proposed Rule and Departmental Responses

Of the approximately 30 pieces of correspondence we received on the March 7, 2003, LTCH PPS proposed rule, 22 pieces contained public comments on the proposed LTCH PPS high-cost and short-stay outlier policies that were included in the proposed rule. A summary of those comments and our departmental responses follow.

Comment: Many commenters supported our proposal to use the most recent tentatively settled Medicare cost report to determine the cost-to-charge ratios to be used for outlier payments under the LTCH PPS, since this policy would provide the most current data reviewed by the fiscal intermediaries for purposes of the outlier payment. A number of commenters also agreed with the proposal to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio, stating that this proposal would remove incentives to rapidly increase charges relative to costs.

Response: We agree with the commenters and we are adopting the proposal to use the most recent tentatively settled Medicare cost report to determine the cost-to-charge ratios and the proposal to eliminate the use of statewide averages for hospitals with cost-to-charge ratios below the minimum floor cost-to-charge ratio. However, we want to take the opportunity in this final rule to clarify some points about the application of these policies.

The IPPS outlier policy in this final rule, which requires applying a hospital's actual cost-to-charge ratio to determine the cost of a case, even where the hospital's actual cost-to-charge ratio falls below the floor, will become effective 60 calendar days after the date of publication of this final rule. This policy will similarly become effective for LTCHs 60 calendar days after the date of publication of this final rule. For purposes of making actual outlier payments for discharges between July 1, 2003, and the effective date of this outlier rule (60 calendar days after the date of publication), LTCHs' cost-to-charge ratios that are below the floor will be replaced by the statewide average as under existing policy, while any outlier payments made on or after the effective date of this outlier rule will be determined under the new policy using the LTCHs' actual cost-to-charge ratio, even if that cost-to-charge ratio is below the floor.

Following is an example of how the policy eliminating the floor cost-to-charge ratio will apply beginning July 1, 2003:

As of July 1, 2003, Hospital A has a cost-to-charge ratio of 0.250, which is above the current cost-to-charge ratio floor of 0.206. Therefore, for purposes of determining outlier payment in the 2004 LTCH PPS rate year (July 1, 2003, to June 30, 2004), Hospital A would continue to use its cost-to-charge ratio of 0.250 (unless the fiscal intermediary changes Hospital A's cost-to-charge ratio due to tentative settlement of a cost report) and use the fixed-loss amount to be published in the LTCH PPS final rule for the 2004 LTCH PPS rate year.

Hospital B has a cost-to-charge ratio of 0.200, which is below the cost-to-charge ratio floor of 0.206. For purposes of determining outlier payments from July 1, 2003, until the effective date of this final rule (60 calendar days after the date of publication), Hospital B continues to use the statewide average cost-to-charge ratio. However, beginning with the effective date of the final rule, Hospital B uses its actual cost-to-charge ratio of 0.200 (unless the fiscal intermediary changes Hospital B's cost-to-charge ratio due to tentative settlement of a cost report), and continues to use the fixed-loss amount to be published in the LTCH PPS final rule.

Comment: Numerous other commenters representing LTCHs disagreed with our proposed policy that, for LTCHs, any reconciliation of outlier payments would be made upon cost report settlement to account for differences between the actual cost-to-charge ratio and the estimated cost-to-charge ratio for the period during which the discharge occurs. One commenter stated that the proposal would create accounting difficulties for hospitals and fiscal intermediaries, and suggested that if CMS is concerned about "gaming" related to outlier payments, then, as an alternative, the fiscal intermediaries could monitor charges per diem using PS&R data, or a quarterly reporting mechanism can be established similar to the HCFA-91. Other commenters wrote that constant updates to the cost-to-charge ratios for outlier payments would be a costly and burdensome process for LTCHs and fiscal intermediaries to administer. The commenters recommended that CMS maintain its current policy of using the most recent final cost report for cost-to-charge ratios with no changes until the following fiscal year.

Another commenter stated that requiring the fiscal intermediary to notify providers every time a change is