

high cost category, thereby retroactively adjusting the lifetime reserve days available to a beneficiary.

One commenter stated that coverage based on a changing cost-to-charge ratio would not be a sound policy, and CMS should consider changing the high-cost outlier threshold determination to a per diem methodology to ensure that all beneficiaries receive the same number of benefit days and coverage.

The commenters also pointed out that, for similar reasons, a policy that would retroactively reconcile outlier payments will create an unworkable system for the administration of Medicare supplemental (Medigap and Medicaid) payments, since such a policy anticipates that the Medigap and Medicaid programs will make retroactive adjustments to beneficiary benefits and payments. The commenters recommended that CMS consider severing the link between the count of Part A benefit days and cost outlier status and, instead, count beneficiary Part A days on a per diem basis so that the Part A benefit is not dependent upon changes to the cost-to-charge ratio and high-cost outlier status.

*Response:* We have reviewed all the comments concerning the effect of the policy for reconciling outlier payments on a beneficiary's lifetime reserve days and eligibility for coverage under the Medigap and Medicaid programs. We believe that the commenters have raised a number of valid concerns. While we are adopting as final the policy to reconcile outlier payments upon cost report settlement to account for differences between the estimated cost-to-charge ratio and the actual cost-to-charge ratio for the period during which the discharge occurs, we believe that, because the outlier policy changes are intended to address accuracy of outlier payments rather than coverage or eligibility, any changes to a LTCH's outlier payments made as a result of reconciliation should not retroactively affect a beneficiary's lifetime reserve days or coverage status under Medigap or Medicaid. Specifically, no retroactive adjustments will be made to determine the day on which a beneficiary's stay moves to high-cost outlier status, and, therefore, no retroactive adjustments will be made to lifetime reserve days used or available. The reconciliation of outlier payments to the LTCH by the fiscal intermediary will simply be a redetermination of outlier payment upon cost report settlement. Similarly, no retroactive adjustments are required to be made to beneficiary benefits and payments under Medigap and Medicaid.

Accordingly, we do not believe it is necessary to adopt the policy suggested

by the commenters under which beneficiary Part A days would be counted on a per diem basis, since the receipt of Part A benefits will not be dependent upon changes to the cost-to-charge ratio and outlier status.

*Comment:* Commenters wrote that since the LTCH PPS is new and CMS and the LTCH industry have almost no experience with the LTCH PPS and outlier payments, CMS has no policy reason for changing the LTCH PPS outlier policy at this time. The commenters stated that additional time and experience under the new system are needed before CMS has the information necessary to appropriately address potential problems.

*Response:* We disagree with the commenters' assertion that because the LTCH PPS is still in its nascent stages, the challenges that have surfaced under the IPPS may not yet necessarily apply to the LTCH PPS. However, we believe those same challenges may arise in the LTCH PPS context because many of this system's features are modeled after the IPPS. We believe that being proactive in ensuring the accuracy of outlier payments by making additional payments only for truly high-cost cases is a matter of sound public policy. It is also our responsibility to ensure the integrity of the Medicare Trust Fund, which we believe this policy accomplishes. We note that we will continue to monitor all aspects of the LTCH PPS, and may propose to make other adjustments in the future if warranted.

*Comment:* One commenter asked that CMS clarify the effective date of the proposed cost-to-charge ratio policies. The commenter stated that if the effective date is for discharges occurring on or after July 1, 2003, then, for LTCHs with a fiscal year end date of June 30, the implementation process would be eased for the fiscal intermediaries and LTCHs. However, for those LTCHs that do not have a fiscal year end date of June 30, the commenter asserted that the task of accounting for the proposed cost-to-charge ratio regulations would be administratively burdensome for the fiscal intermediaries and LTCHs. Therefore, the commenter requested that the effective date for the proposed outlier regulations should be for cost reporting periods beginning on or after July 1, 2003.

*Response:* We do not believe that the implementation of the outlier policies will be overly burdensome to LTCHs. As we noted previously, although this provision is effective 60 days after the date of publication of this final rule, we understand that, given the large workload and limited resources of our

fiscal intermediaries, attempting to implement this provision for all hospitals receiving outlier payments at the same time would create an administrative burden. We intend to issue a program instruction in the near future to assist fiscal intermediaries in implementing this provision during the remainder of the LTCH rate year.

Also, as we stated in responses to comments above, the outlier policy on applying a LTCH's actual cost-to-charge ratio to determine the cost of a case, even where the LTCH's actual cost-to-charge ratio falls below the floor, will become effective for discharges occurring on or after August 8, 2003. For purposes of making outlier payments between July 1, 2003, and August 8, 2003, cost-to-charge ratios that fall below the floor will be replaced by the statewide average, while any outlier payments made on or after August 8, 2003, will be determined using the actual cost-to-charge ratio, even if that cost-to-charge ratio falls below the floor.

The policies at § 412.84(i)(1), (3), and (4) and § 412.84(m), as referenced under the LTCH PPS outlier regulations at § 412.525(a)(4) and § 412.529(c)(5) concerning use of alternative ratios and the elimination of the floor on cost-to-charge ratios are effective for discharges occurring on or after August 8, 2003. The effective date of the policy concerning use of the most recent tentatively settled cost report or the most recent settled cost report at § 412.84(i)(2) is for discharges occurring on or after October 1, 2003. The effective date of the policy regarding reconciliation of outlier payments is for discharges occurring on or after August 8, 2003.

For example, regardless of the fiscal year begin date, between July 1, 2003, and August 8, 2003, if a hospital's cost-to-charge ratio is below the floor, the hospital would continue to use the statewide average cost-to-charge ratio as under existing policy. However, beginning with discharges occurring on or after August 8, 2003, the hospital would use its actual cost-to-charge ratio, even if it were below the floor, and not the statewide average cost-to-charge ratio. Similarly, effective August 8, 2003, under § 412.84(i)(1), CMS may use an alternative cost-to-charge ratio, or a hospital may request that the fiscal intermediary use a different cost-to-charge ratio based on substantial evidence presented by the hospital. Then, regardless of a hospital's fiscal year begin date, effective for discharges occurring on or after October 1, 2003, a hospital's cost-to-charge ratio will be based on the data available from the most recently tentatively settled or final