

provided to the public, thereby compromising the meaning of the public comments.

Response: We do not agree with the commenters. For FY 2003, we must comply with section 1895(b)(3)(A)(i)(III) of the Act (as re-designated by section 501 of BIPA) governing the payment amount under HH PPS. Section 1895(b)(3)(A)(i)(III) of the Act requires the Secretary to determine the payment amount for FY 2003 as if there were a 15 percent reduction to the limits under the IPS updated to FY 2003. The IPS ended with the implementation of home health PPS on October 1, 2000. Originally, the BBA 1997 required the base year PPS rates to be budget neutral to the IPS with the limits reduced by 15 percent. This requirement was delayed in subsequent legislation until section 501 of BIPA made it applicable to the home health PPS payment amount for FY 2003.

As we explained in the FY 2003 update notice, the level by which actual payments to HHAs would be reduced by lowering the limits is not the same percent by which the IPS limits would be lowered. Our actuaries have used the 7 percent reduction in the PPS rates in every estimate for legislation since BBA 1997. Since it was the intention of the Congress to delay the cut it had already specified, we have simply captured the reductions in payments and carried those assumptions forward to the present. If our actuaries had attempted to impute the continued operation of the IPS until October 2002 given the amount of money available under the IPS limits that had not been spent, the actuaries may have well identified a larger reduction in payments. We did not believe such a result was the intent of the Congress.

Comment: Some commenters urged us to postpone the FY 2003 reduction to the PPS rates until the Congress acts to repeal the reduction.

Response: The FY 2003 update notice reflected the statutory requirements governing the home health PPS payment amount. The statutory requirements included both the required annual update to the PPS rates, according to section 1895(b)(3)(B) of the Act and section 1895(b)(3)(A)(i)(III) of the Act reflecting the IPS estimation. Both sections of the statute were effective October 1, 2002 for FY 2003. As the statute was not revised as of October 1, 2002, the FY 2003 update notice appropriately reflected the statutory requirements as of that date.

Comment: Some commenters raised concerns about the assumptions used to determine the low utilization payment

adjustment and corresponding impact on the episode rates. Commenters urged us to refine the methodology governing low utilization payment adjustments.

Response: We understand the commenter's concerns. At this time, we are continuing to gather HH PPS data. As we gather more data, we will continue to monitor this issue.

Comment: One commenter requested a detailed explanation of the market basket inflation update utilized in the FY 2003 PPS rate setting. The commenter points out that costs of home care services have increased recently due to new administrative responsibilities and reduced economies of scale due to lowered visit volume. As a result of staff shortages of nurses and home health aides, labor costs have increased. In addition, the HHAs have experienced rising premiums for liability insurance, workers compensation insurance, and employee health insurance. The commenter believes these factors should be incorporated in the market basket calculations and feels that the market basket update relies on too many proxies and surrogates for actual cost increases.

Response: We agree with the commenter that showing the detail of the market basket increase for each year's payment update would be helpful. Thus, in this year's rule, we have added a table detailing the FY 2004 market basket forecast, which we believe adequately reflects the price increases for home health services (see Table 1 in section III.B. of this notice).

Comment: Some commenters suggested that it is inappropriate and inequitable to use the previous fiscal year's pre-floor and pre-reclassified hospital wage index to adjust the current fiscal year's HH PPS rates.

Response: We believe that the hospital wage index data we use is the most current data appropriate for adjusting HHA payments. As we have stated in both the FY 2002 and FY 2003 update notices, we use the most recent available pre-floor and pre-reclassified hospital wage index data available at the time of publication.

Comment: A commenter requested clarification of our response to comments in the update notice published on June 28, 2002 in the **Federal Register** that states, "the statute does not contemplate a recalculation of the initial base year after the rates are established." The commenter requested specific clarification of whether or not we were referring to the retrospective or prospective recalculation.

Response: In our response to the comments on the June 2002 notice with

comment period, we were referring to the commenter's request for a retrospective recalculation of the initial base year rates.

Comment: A commenter is requesting specific data regarding the frequency of outlier payments, any Home Health Resource Group (HHRG) connections to outlier payments, and the range of discipline-specific visits occurring in outlier cases and a re-evaluation of the outlier methodology.

Response: We appreciate the comment. We are still developing the data requested by the commenter. We anticipate releasing and/or publishing the data upon their completion.

Comment: We received comments on the pre-floor and pre-reclassified hospital wage index. Specifically, commenters noted that a reduction in wage index occurred in their area.

Response: The HH PPS uses the pre-floor and pre-reclassified hospital wage index. Accordingly, we refer the commenters to the annual acute care hospital inpatient proposed and final rules, which provide detailed explanations of the costs that are included in the hospital wage index and how the hospital wage index is calculated. The hospital wage index is computed annually, using data collected annually from hospitals' Medicare cost reports. In addition, hospital data may differ from year-to-year, in part, because in labor market areas with few hospitals, annual variations in wage index values are typical.

Comment: A commenter urged us to develop a home health specific wage index.

Response: We have previously developed a home health specific wage index, which the industry did not support because it was viewed less favorably or less accurate than the pre-floor and pre-reclassified hospital wage index. Specifically, the home health industry had concerns with the methodology used to develop a home health specific wage index. These concerns coupled with our lack of applicable specific home health wage index led to our adoption of the hospital wage index in developing home health PPS. We will, however, continue to review the feasibility of this recommendation.

III. Provisions of this Notice With Comment Period

A. National Standardized 60-Day Episode Rate

Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit