

intermediary or CMS error in the entry or tabulation of the final wage data, it was provided an opportunity to send a letter to both its fiscal intermediary and CMS that outlined why the hospital believed an error existed and provided all supporting information, including relevant dates (for example, when it first became aware of the error). These requests had to be received by CMS and the fiscal intermediaries no later than June 6, 2003.

Changes to the hospital wage data were only made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file.

Specifically, at this stage of the process, neither the intermediary nor CMS accepted the following types of requests:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to CMS by fiscal intermediaries on or before April 4, 2003.

- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2003 wage data file.

- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 6, 2003) are incorporated into the final wage index in the final rule to be published by August 1, 2003, and to be effective October 1, 2003.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2004 payment rates. Accordingly, hospitals that did not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes.

Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to challenge later, before the Provider Reimbursement Review Board, the failure of CMS to make a requested data revision (*See W. A. Foote Memorial Hospital v. Shalala*, No. 99-CV-75202-DT (E.D. Mich. 2001), also *Palisades General Hospital v. Thompson*, No. 99-1230 (D.D.C. 2003)).

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals had access to the final wage data by

early May 2003, they had the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2004 wage index in this final rule, and the implementation of the FY 2004 wage index on October 1, 2003. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after publication in the final rule, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index only in those limited circumstances in which a requesting hospital can show: (1) that the intermediary or CMS made an error in tabulating its data; and (2) that the requesting hospital could not have known about the error or did not have an opportunity to correct the error, before the beginning of FY 2004 (that is, by the June 6, 2003 deadline.) This provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As indicated earlier, since a hospital had the opportunity to verify its data, and the fiscal intermediary notified the hospital of any changes, we do not expect that midyear corrections would be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value will be effective prospectively from the date the correction is approved.

Comment: One commenter requested that CMS release all of the assumptions used in developing the MSA average hourly wage file posted on the Internet, including the midpoint of cost reporting period adjustment factors. The commenter also requested that CMS release a file with the average hourly wage by hospital prior to the proposed rule. The commenter believed that this information would facilitate a hospital's review of its wage data.

Response: We agree that providing all of the assumptions used in calculating the wage index would be useful for hospitals and other interested parties. This year, we added to our Web site a spreadsheet that can be used to calculate a hospital's average hourly wage. Beginning with the release of the FY 2005 wage index, we will also publish on our Web site the midpoint of cost reporting period adjustment factors and a file that includes the average hourly wage for each hospital.

Comment: One commenter recommended that CMS establish a wage index list server similar to those available for the various open door forums. The list server would allow CMS to e-mail interested parties when items, such as the wage index PUF and program memoranda, are released.

Response: We currently notify all hospitals, through the fiscal intermediaries, regarding all public use files and program memorandum releases pertaining to the wage index. We also post this information on the IPPS Web site (<http://cms.hhs.gov/providers/hipps/ippswage.asp>). In addition, we make announcements regarding the wage index at the hospital open door forums. To supplement these efforts, we will also begin announcing the availability of wage index files and new program memoranda on the hospital open door forum Web site, at <http://www.cms.hhs.gov/opendoor/>. Those registered with the hospital open door forum list server will be automatically notified when there are announcements at this site pertaining to the wage index. Information on registering with the hospital open door forum list server is located at the open door forum Web site.

Comment: One commenter expressed concern regarding the average hourly wage calculator available on the Internet, stating that they were unable to replicate the average hourly wage published in the proposed rule for its area hospitals using the May public use file data and the online calculator.

Response: The average hourly wage values printed in the proposed rule, published on May 19, 2003 in the **Federal Register**, reflect the data saved in our database as of February 17, 2003. Alternatively, the May public use file was updated based on data collected through May 5, 2003. Therefore, calculating an average hourly wage using the May data could yield discrepancies between the value published in the proposed rule and the number generated by the online calculator.

H. Modification of the Process and Timetable for Updating the Wage Index

In the May 19, 2003 proposed rule, we stated that although the wage data correction process described in section III.G. of the preamble of this final rule has proven successful in the past for ensuring that the wage data used each year to calculate the wage indexes are generally reliable and accurate, we continue to be concerned about the growing volume of wage data revisions initiated by hospitals after the release of the first public use file in February. This issue has been discussed previously in