

rule, we have not made any changes to our policies that would preclude recreational therapy services from those covered by Medicare. In particular the introduction of the IRF PPS does not change this fact. Accordingly, since recreational therapy services were provided in the IRF base period, the costs of providing these covered services are included in standardized payment amount upon which the IRF PPS rates are based.

VII. Provisions of the Final Rule

The provisions of this final rule reflect the provisions of the May 16, 2003 proposed rule, except as noted elsewhere in this preamble. Following is a summary of the major changes that we have made in this final rule, either in consideration of public comments received or to more effectively implement the FY 2004 IRF PPS.

- In the proposed rule we proposed a market basket increase factor of 3.3 percent for FY 2004 IRF 1997 data. In this final rule, the payment rates set forth for the FY 2004 IRF market basket increase factor is 3.2 percent using 1997 data.

- As indicated in the May 16, 2003 proposed rule, in this final rule we are using updated FY 2004 IRF market basket index data from 1992 through 1997 and an updated FY 2004 IRF labor-related share and wage indices to update the IRF PPS rates to FY 2004. Because any adjustment or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner as required by statute, we amend our regulation at § 412.624(e)(1).

- As indicated in the May 16, 2003 proposed rule, we finalize changes to the methodology for determining IRF payments for high-cost outliers to conform our policies to other Medicare prospective payment systems as appropriate. In this final rule we revise the IRF outlier payment methodology effective for discharges on or after October 1, 2003 and adopt as final the continued use of the \$11,211 threshold amount. However, a ceiling will be applied to an IRF's cost-to-charge ratios in accordance with § 412.624(e)(4). We will continue to pay outlier cases at 80 percent of the difference between the estimated cost of the case and the outlier threshold and assign the applicable national average for new IRFs.

- Under § 412.624(e)(4), we provide for an additional payment to a facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients

and for rural locations) as specified by us. Effective for discharges on or after October 1, 2003, additional payments made under this section will be subject to the adjustments at § 412.84(i) except that national averages will be used instead of statewide averages. Also effective for discharges on or after October 1, 2003, additional payments made under this section will also be subject to adjustments at § 412.84(m).

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are therefore soliciting public comment on each of these issues for the proposed information collection requirements discussed below.

Section 412.608 Patients' Rights Regarding the Collection of Patient Assessment Data

Under this section, before performing an assessment using the inpatient rehabilitation facility patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient the form entitled "Privacy Act Statement—Health Care Records" and the simplified plain language description of the Privacy Act Statement—Health Care Records, which is a form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities;" the inpatient rehabilitation facility must document in the Medicare inpatient's clinical record that the Medicare inpatient has been given the documents specified in this section.

The burden associated with this section is the time it will take to document that the patient has been given the requisite forms. We estimate

that it will take no more than a minute per patient. There will be an estimated 390,000 admissions per year, for a total of 6,500 hours per year.

Section 412.614 Transmission of Patient Assessment Data

1. The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient.

These information collection requirements associated with the IRF PPS are currently approved by OMB through July 31, 2005 under OMB number 0938-0842.

2. Under paragraph (e), *Exemption to being assessed a penalty for transmitting the IRF-PAI data late*, CMS may waive the penalty specified in paragraph (d) of this section. To assist CMS in determining if a waiver is appropriate the inpatient rehabilitation facility must fully document the circumstances surrounding the occurrence.

Given that it is estimated that fewer than 10 instances will occur on an annual basis to necessitate a waiver, this requirement is not subject to the PRA as stipulated under 5 CFR 1320.3(c).

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in § 412.608 and § 412.614. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies to CMS within 30 days of this publication date directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Office of Regulations Development and Issuances, Reports Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244-1850. Attn: Julie Brown, CMS-1474-P; and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be emailed to the following address: E-mail: baguilar@omb.eop.gov; or faxed to OMB at (202) 395-6974.

IX. Regulatory Impact Analysis

A. Introduction

The August 7, 2001 IRF PPS final rule (66 FR 41316) established the IRF PPS for the payment of inpatient hospital services furnished by a rehabilitation