

facility's first three cost reporting periods under the PPS, up to, and potentially including, the one that began in FY 2001. Furthermore, according to section 102 of BBRA, a facility could nonetheless elect to be paid entirely under the Federal rates. Accordingly, starting with cost reporting periods beginning in FY 2002, we base payments entirely on the Federal rates and, as mentioned previously in this final rule, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

F. Use of the SNF Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis, and is discussed in greater detail in section III.H of this final rule.

II. Provisions of the Proposed Rule and the Supplemental Proposed Rule

The proposed rule that we published in the **Federal Register** on May 16, 2003 (68 FR 26758) included proposed FY 2004 updates to the Federal payment rates used under the SNF PPS. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the updates reflect the full SNF market basket percentage change for the fiscal year. The proposed rule also proposed introducing a one-year lag in the wage index data, similar to the PPS methodologies already being used for home health and inpatient rehabilitation facility services. This one-year lag would avoid the problems associated with multiple mid-year corrections in the hospital wage data. We also proposed clarifying the distinct part criteria to be used, in part, to help identify those SNFs that are hospital-based rather than freestanding. Further, we invited public comments on additional HCPCS codes that could represent the type of "high-cost, low probability" services within certain service categories (that is, chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that section 103 of the BBRA has authorized us to exclude from the SNF consolidated billing provision.

In addition to discussing these general issues in the proposed rule, we also proposed making the following specific revisions to the existing text of the regulations:

- In § 409.20, we would make a technical correction to the cross-reference in paragraph (c).

- We would revise § 483.5 to include specific definitions of the terms "distinct part" and "composite distinct part." This revision would also involve making conforming changes elsewhere in subpart B of part 483 of the regulations, as well as in parts 413 and 440. In addition, we proposed correcting a typographical error that currently appears in the regulations text at § 483.20(k)(1).

In the supplemental proposed rule that we published in the **Federal Register** on June 10, 2003 (68 FR 34768), we invited public comments on the advisability of amending the regulations text at § 413.337(d)(2), to include an adjustment to the annual update of the previous fiscal year's rate that would account for forecast error in the SNF market basket, beginning with FY 2004. In addition, we also invited comments on methods for ensuring that additional payments that could result from that adjustment would be used to promote quality of care in the SNF setting (including direct care services to residents). We also proposed to make a technical correction to the second sentence of the regulations text in § 413.345, in order to correct the spelling of the word "standardized."

More detailed information on each of these issues, to the extent that we received public comments on them, appears in the discussion contained in the following section of this preamble.

III. Analysis of and Responses to Public Comments

In response to the publication of the proposed rule on May 16, 2003 (68 FR 26758) and the supplemental proposed rule on June 10, 2003 (68 FR 34768), we received over 400 comments. Many consisted of form letters, in which we received multiple copies of an identically worded letter that had been signed and submitted by different individuals. Further, we received numerous comments from various trade associations and major organizations. Comments originated from nursing homes, hospitals, and other providers, suppliers, and practitioners, nursing home resident advocacy groups, health care consulting firms and private citizens. The following discussion, arranged by subject area, includes a description of the comments that we received, along with our responses.

Comment: A few commenters expressed concern about the abbreviated comment periods available for the proposed rule and the supplemental proposed rule. They asserted that the shorter timeframes were burdensome, and affected their ability to furnish comprehensive responses. They asked

us to provide the full 60-day comment period in the future.

Response: While the proposed rule was not actually published until May 16, 2003, we note that this document went on public display at the Office of the Federal Register several days earlier, on May 10, 2003. Accordingly, the contents of the proposed rule were, in fact, publicly available for the full 60-day comment period. Further, we note that in contrast to the proposed rule, the supplemental proposed rule did not attempt to address the SNF PPS in a comprehensive manner, but instead focused exclusively on a single issue—the possibility of introducing an adjustment to account for forecast error. As noted in the preamble to the supplemental proposed rule (68 FR 34772), given the extremely narrow scope of this document, we believe that even a comment period of less than 60 days provided interested parties with sufficient opportunity to comment adequately on it.

A. Update of Federal Payment Rates Under the SNF PPS

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2003. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2 of the May 12, 1998 interim final rule (63 FR 26295 through 26297)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2004 rates reflect an update using the full amount of the latest market basket index. The FY 2004 market basket increase factor is 3.0