

of this wage proxy should not be confused with the forecast error correction, which is only the difference between the actual and forecasted percent change in the "same" market basket.

These commenters disagreed with the use of the average yield for AAA bonds as the price proxy for interest costs of for-profit nursing homes, rather than the average yield for BAA or lower rated bonds. In the SNF market basket, the change in the average yield for AAA bonds is used in calculating the SNF market basket price change of the debt held by for-profit SNFs. The amount of the bonds issued, the average term of these bonds, and the mix of bond ratings issued should all be held constant in a fixed-weight Laspeyres price index, such as the SNF market basket. The price change of interest costs associated with corporate bonds should reflect the change in interest rates (yield) for the mix of differently rated corporate bonds held in the base period. Our price proxy should represent the change in the interest rates associated with this fixed mix.

We have conducted sensitivity analyses of the market basket using the change in the yield for different bond ratings, and the change in the long-run yields of AAA, AA, A, and BAA bonds were all very similar. The use of any of these bond yields would produce essentially similar results. For simplicity, both in the maintenance of the index and in the availability of forecasted data, we have chosen to use Moody's AAA corporate bonds. Had we used BAA corporate bonds, the resulting SNF market basket increases would have been identical.

We believe that the current method for reflecting corporate bond prices in the SNF market basket is appropriate because it keeps the mix of corporate bonds issued constant at the base period proportions and captures the associated price change in this mix without having to reflect the rating on each separately issued bond, since they move similarly over time. While we understand the commenter's concern, our research and analysis indicate that our method of accounting for change in bond prices for for-profit SNFs in the market basket is appropriate.

These commenters noted that the current price proxies for interest costs do not reflect the short-term nature of the debt funding currently available to the industry or the fluctuations in rate changes in the leasing marketplace. These are important issues and we will continue to conduct the necessary research on these topics to ensure that they are adequately considered in the

market basket. Since we currently use a similar debt life for SNFs and hospitals when vintage weighting the capital components of the market basket, a movement towards shorter average debt terms for SNFs should be considered. (Vintage weighting is the process of weighting together the price changes of current and prior capital purchases (or debt held) based on the average historical acquisition pattern over the useful life of the asset or debt instrument.) We will review available data sources on this information and make a change if appropriate. While we currently believe that leasing costs are appropriately accounted for in the market basket, we will also review this issue more fully to ensure that this is both theoretically and empirically the case.

When we rebased the SNF market basket in 2001, we reviewed Medicare cost report data on professional liability insurance, and found that the vast majority of SNFs did not enter their data into this section of the cost reports (only about 20 SNFs provided that information in 1997). We also looked at Department of Commerce Input-Output data for 1997, and found that insurance was less than 0.2 percent of total SNF expenses. Because the SNF market basket is currently based on the cost structure facing SNFs in 1997, it appears that professional liability costs are a very small portion of total costs and, thus, would likely not have a significant impact on the market basket percentage change. However, we also understand the emerging importance of this issue to SNFs and will continue to review the Medicare cost report data, as well as any other data sources that commenters can recommend to us that would meet our criteria, with the hope that we may possibly incorporate this information into the market basket structure when appropriate.

Comment: A commenter stated that we should reconsider the necessity of a two-year forecast error correction lag if, over time, data become available on a more timely basis.

Response: It is our policy when determining the forecast error correction to use the most recent data available. Currently, this would mean a two-year lag on the correction is necessary, since historical data for the current fiscal year are not available until after the following year's update is determined. Should the data become available on a quicker basis, we would investigate the continued need for a two-year lag. However, a change in availability of data is unlikely, since these data (primarily from Federal government databases) are published on pre-

determined schedules. Producer Price Indices (PPI), for instance, are not final until five months after the reference month, and Employment Cost Indices (ECI) only become available in the quarter following the reference quarter. Based on these schedules, for example, a determination of the actual market basket change for FY 2004 would not be available until March 2005. Therefore, it would be impossible to incorporate this information any earlier than the FY 2006 update, creating an unavoidable two-year lag.

I. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of high-cost, low probability services (identified by Healthcare Common Procedure Coding System (HCPCS) codes) within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect, that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) In addition, section 313 of the BIPA specified that consolidated billing applies only to services furnished to those individuals residing in an institution (or portion of an institution) that is actually certified by Medicare as a SNF.

To date, the Congress has enacted no further legislation affecting the consolidated billing provision. However, as we noted in the April 10, 2000 proposed rule (65 FR 19232), section 1888(e)(2)(A)(iii) of the Act, as added by section 103 of the BBRA, not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but " * * * also gives the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories." In the FY 2001 proposed rule, we also noted that the BBRA Conference Report (H.R. Conf.