

States are not included in the definition of a small entity.

This final rule updates the SNF PPS rates published in the July 31, 2002 update notice (67 FR 49798), thereby increasing aggregate payments by an estimated \$850 million. As indicated in Table 11, the effect on facilities will be an aggregate positive impact of 6.4 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2004 wage indices and the degree of Medicare utilization. While this final rule is a major rule, its overall impact is extremely small; that is, less than 3 percent of total SNF revenues from all payor sources. Since the overall impact is positive on the industry as a whole, and on small entities specifically, it is not necessary to consider regulatory alternatives.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For a final rule, this analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the payment rates set forth in this final rule also affect rural hospital swing-bed services, we believe that this final rule will have a positive fiscal impact on small rural hospitals. However, because this incremental increase in payments for Medicare swing-bed services is relatively minor in comparison to overall rural hospital revenues, this final rule will not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million or more. This final rule will increase payments to SNFs by over 6 percent, but will have no other substantial effect on State, local, or tribal governments. Again, we believe that the aggregate impact of this major rule is positive, and does not meet the significance thresholds for determining added costs under the Unfunded Mandates Reform Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct

requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this final rule will have no substantial effect on State and local governments.

The purpose of this final rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2004 and to address a number of policy issues related to the PPS. We believe that the revisions and clarifications mentioned elsewhere in this final rule (for example, with respect to determining distinct part status) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the rule. As such, these revisions will not represent an additional burden to the industry.

B. Anticipated Effects

This final rule sets forth updates of the SNF PPS rates contained in the July 31, 2002 update (67 FR 49798). The impact analysis of this final rule represents the projected effects of the changes in the SNF PPS from FY 2003 to FY 2004. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit, based on the latest available Medicare claims from 2001. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, the payment rates for FY 2004 are updated by a factor equal to the market basket index percentage increase to determine the

payment rates for FY 2004. We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements. In updating the rates for FY 2004, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indices used for adjusting the Federal rates). These revisions will increase payments to SNFs by approximately \$400 million. In addition, we have adjusted the FY 2004 rates to reflect the 3.26 percent cumulative forecast error since the start of the SNF PPS on July 1, 1998. This adjustment increases payments to SNFs by an additional \$450 million, for an aggregate increase in payments of \$850 million.

The impacts are shown in Table 11. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next twenty rows show the effects on urban versus rural status by census region. The final four rows show the effects on facilities by ownership type.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column of the table shows the effect of all of the changes on the FY 2003 payments. The market basket increase of 3.0 percentage points is constant for all providers and, though not shown individually, is included in the total column. Similarly, the 3.26 percent forecast error adjustment is included in the fourth column and is constant for all providers. It is projected that aggregate payments will increase by 6.4 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes