

received and our responses to those comments are set forth below.

*Comment:* Several commenters requested that we add language to the regulation that would prohibit fiscal intermediaries (FIs) from requesting paper copies of the Medicare cost report, in addition to the electronic cost report.

*Response:* According to our CMS manual provisions (Provider Reimbursement Manual 15–2, chapter 1, sections 131 and 132), the electronic cost report file is considered the official cost report by the FI and, as a result, must be accepted by the FI. Since March 31, 1993, hospitals have not been required to submit a paper copy of the cost report to the FI. Similarly, since March 31, 2000, SNFs and HHAs have not been required to submit a paper copy of the cost report to the FI. We have, however, provided a two-year phase-in period for the providers that are subject to this regulation. During this two-year phase-in period, the paper copy of the cost report will be considered the official copy. After the expiration of the two-year period, though, a paper copy of the cost report will not be required to be submitted to the FI. We believe this phase-in period is necessary, so that providers are familiar with the requirements of electronic cost reporting.

*Comment:* We received several comments concerning our proposal to distribute free electronic cost reporting software to providers who can demonstrate that it would be a financial hardship to purchase software from vendors. One comment, from a software vendor, requested that we add language that would preclude the distribution of free software because it would be “unfair” to small vendors and the software would be poor quality. Another commenter asked that we specify a date that the free software would be available to providers. Also, we received a comment that the CMS-provided software would not allow providers to determine final settlement and that providers would still have to complete the cost report manually.

*Response:* With regard to the comment concerning adding language to the regulation that would preclude the distribution of free software, free software is made available to the providers based upon financial need only. The provider must demonstrate to the FI that the provider is financially unable to purchase commercial software. It has been our experience, with the hospitals, SNFs, and HHAs currently required to file electronically, that relatively few providers request the free software. If, however, the provider

requests the free software and can demonstrate to the FI that it would be a financial hardship to purchase the software from a vendor, we will provide the software so that the provider can comply with the provisions of this rule. The quality of the software will be sufficient to allow the provider to comply with all provisions of this rule in a timely and efficient manner.

With regard to the comment concerning the projected date that the free software will be available, we expect that it should be available by September 30, 2004.

The comment that the CMS-provided software would not allow providers to determine final settlement and, as a result, that providers would still have to complete the cost report manually, is correct. The software allows the provider to create an electronic cost report file only for use by the FI and a final settlement amount is not necessary in this instance. Providers who use free software are always required to manually complete the cost report and to manually determine the final settlement.

*Comment:* We received a comment that the final regulation should also require that Comprehensive Outpatient Rehabilitation Facilities (CORFs) and Outpatient Physical Therapy providers (OPTs) file cost reports electronically.

*Response:* We are not requiring CORFs and OPTs to file electronically because CORFs are paid on a fee schedule for services furnished on or after April 1, 2001 and OPTs will be paid on a fee schedule for services furnished on or after July 1, 2003. For those providers with cost reporting periods beginning on or after the aforementioned dates, cost reports will no longer be required. We believe that it would be administratively burdensome as well as not economically feasible to require these providers to meet the electronic filing requirements for such a short period of time.

*Comment:* We received a comment that the final rule should include an exemption from the electronic filing requirement for no or low utilization providers because it appears that these providers are exempt from such filing requirements in § 413.24(h).

*Response:* Section 413.24(h) does not address the electronic filing requirement but it does provide that an FI may waive the requirement that a provider submit a full cost report if it qualifies as low utilization or no cost Medicare provider. Thus, based upon a waiver by the FI, under § 413.24(h), a low utilization or no Medicare utilization provider would not be required to file an electronic cost report. Because our current regulations

clearly state that a full cost report need not be filed by a low utilization or no Medicare utilization provider, we believe that an exception, such as the one requested by the commenter, is not necessary for this final rule.

*Comment:* We received a comment that we should clarify the minimum requirements of what constitutes a financial hardship for the purposes of qualifying for the waiver and/or free software.

*Response:* Given the wide spectrum of the providers affected, we believe it is best to determine financial hardship on a case-by-case basis. Some examples of financial hardship include cash flow problems, previous year's net operating loss, and a required repayment of the past year's overpayment. These are some examples of financial hardship but should not be seen as all-encompassing. The flexibility to make these determinations is necessary as the providers differ greatly in terms of size, location, expenses, and services provided. The FI will need to have this flexibility in order to make a fair and reasonable determination for each provider.

*Comment:* We received several comments concerning the one-time pass through of costs (direct reimbursement on a dollar-for-dollar basis) for RHCs and FQHCs rather than reimbursing those providers based on the determination of the total allowable costs of the RHCs and FQHCs.

*Response:* We are unable to reimburse RHCs and FQHCs in a way other than direct reimbursement because to do so would require a statutory change in the method of reimbursement for the RHCs and FQHCs.

*Comment:* We received a comment reflecting concern that the cost of dial up Internet service required to file electronically would be a burden for rural providers.

*Response:* There is no requirement to use the Internet to electronically file a cost report. The medium for transfer of cost reports submitted electronically to FIs is a 3½" diskette.

*Comment:* We received two comments expressing concern about the phase-in period. One concern was that the two-year phase-in period was too long. Another concern was that the two-year period should be extended to three years.

*Response:* We believe that the two-year phase-in period is necessary to allow providers to become familiar with the requirements of electronic filing and that a shorter phase-in period would be insufficient to accomplish this.

Similarly, prior experience with the hospital cost report, the SNF cost report,