

most cases Medicare beneficiaries with serious mental illnesses would not be able to access these programs without the transportation. They also commented about the current Medicare bad debt policy, which is beyond the scope of the August 12, 2003 proposed rule.

Response: The services that are covered as part of a PHP are specified in section 1861(ff) of the Act. Meals and transportation are specifically excluded under section 1861(ff)(2)(I) of the Act.

Comment: Several commenters summed the median cost figures for various combinations of HCPCS codes 90853 (group psychotherapy), 90818 (individual psychotherapy, 45–50 minutes), and 90847 (family psychotherapy, with patient present) and concluded that the per diem amount is considerably less than the combined cost of these services.

Response: We believe that the figures cited by the commenters were taken from a file that shows the median cost for single bills, for example, where group psychotherapy was the only service furnished. We do not believe that this is an appropriate comparison. These amounts are provided to enable the public to identify the median cost of services before scaling. It is important to note that these services are not PHP services, but rather single outpatient therapeutic sessions. As stated earlier, we used data from PHP programs (both hospitals and CMHCs) to determine the median cost of a day of PHP. PHP is a program of services where savings can be realized by hospitals and CMHCs over delivering individual psychotherapy services.

Comment: Several commenters compared the proposed per diem amount to the cost of the minimum services mandated by us or by the local medical review policies (LMRP) used by their FIs.

Response: We have not specified the specific daily components of a PHP. However, there is an edit in our claims processing system to identify claims that do not have at least three services, with at least one psychotherapy service (individual, group, or family therapy) for each day of PHP care. We have implemented this edit to ensure that PHPs meet the statutory requirement that they be intensive treatment programs provided in lieu of inpatient psychiatric hospital services. Claims with fewer than three services per day undergo medical review by the FIs to ensure that the patient is receiving intensive treatment. There may be legitimate reasons for a day on a claim to have fewer services, for example, where the patient leaves the program

early to receive medical care. Medical review of these claims verifies that the patient requires and is receiving a PHP level of care.

Comment: The commenters also questioned our requirement that psychotherapy services be conducted by a Master's level practitioner. One commenter questioned how a hospital could comply with the three services per day requirement when licensed clinical social worker (CSW) services are bundled into the per diem payment.

Response: We do not require that a Master's prepared practitioner furnish psychotherapy services in a PHP. However, in accordance with section 1861(ff)(2)(A) of the Act, we require that practitioners who furnish psychotherapy services are authorized to do so by their States, through licensure, certification, or other official State processes. When a service is furnished by a practitioner who is not authorized by the State to furnish psychotherapy services, the service would not be recognized as a PHP service.

With respect to billing by CSWs, the professional component of services furnished by CSWs to PHP patients is bundled into the per diem payment amount and no billing to the Part B carrier is permitted. The rationale for this policy was explained in the interim final regulation with comment period we published on February 11, 1994 (59 FR 6570).

The OPPTS is intended to pay PHP providers for the resources associated with sponsoring a PHP, for example, building maintenance, utilities, and support staff, including the cost of CSWs. Thus, where a PHP provider utilizes CSWs for psychotherapy services to PHP patients, payment for the professional costs of the CSW is made through the OPPTS per diem payment. However, if a PHP utilizes psychiatrists, clinical psychologists, nurse practitioners, physician assistants, or clinical nurse specialists to furnish therapeutic services to PHP patients, the physician or practitioner may bill the Part B carrier for payment under the physician fee schedule for their professional services. When this occurs, the PHP provider may bill the FI under the OPPTS for the facility resources associated with the psychotherapy service.

We note that a physician or any of the practitioners specified in 42 CFR 410.43(b) (including CSWs) may bill the Part B carrier for their professional services furnished to hospital outpatients who are *not* in a PHP. In this case, the hospital would bill the FI under the OPPTS for the facility

resources associated with the service furnished.

Comment: Several commenters suggested alternative methodologies for paying PHP providers, such as linking per diem and outlier payments to the units of service furnished each day or paying providers the average of all PHP costs plus 40 percent, subject to final settlement based on the provider's cost.

Response: We plan further analysis of the PHP data and may propose changes to the payment methodology for CY 2005. We note that OPPTS is a prospective system and a methodology with interim payments subject to cost settlement would not be allowable under the statute.

Comment: One commenter believes the sample used to determine the rates is skewed and represents a subset of the provider community that provides PHP services.

Response: We do not agree that the sample is skewed. All facilities that submit claims for PHP services have been included in the development of the final rate.

3. Outlier Payments for PHPs

In a related matter, the use of historical cost-to-charge ratios applied to current charges has resulted in an excessive amount of outlier payments being made to CMHCs. As a result of more in-depth analysis of the 2001 data files that were used to compute the CY 2003 PHP per diem amount, we discovered a significant difference in the amount of outlier payments made to hospitals and CMHCs for PHP.

In the August 12, 2003 proposed rule, we stated that given the difference in PHP charges between hospitals and CMHCs, we did not believe it was appropriate to make outlier payments to CMHCs using the outlier percentage target amount and threshold established for hospitals. Therefore, we proposed to designate a portion of the estimated 2.0 percent outlier target amount specifically for CMHCs, consistent with the percentage of projected payments to CMHCs under the OPPTS in CY 2004, excluding outlier payments. Since CMHCs were projected to receive 0.36 percent of total OPPTS payments in CY 2004, excluding outlier payments, we proposed to designate 0.36 percent of the estimated 2.0 percent outlier target amount for CMHCs and establish a threshold to achieve that level of outlier payments. Based on our simulations of CMHC payments in 2004, we proposed to set the threshold for CY 2004 at 11.75 times the PHP APC payment amount. We proposed to apply the same outlier payment percentage that applies to hospitals. Therefore, for CY 2004, we