

proposed to pay 50 percent of CMHC and hospital per diem costs over the threshold.

*Comment:* Several commenters representing CMHCs suggested that in developing our proposed outlier policy, we made generalizations and overreacted to a few aberrant providers. Also, these commenters believe the per diem amount is insufficient and that outlier payments would provide the additional amounts they needed to stay in business until more representative data could be obtained and analyzed.

*Response:* Based on our analysis of PHP claims data, nearly half of the CMHCs billing for PHP services in 2002 received outlier payments. The total dollar amount of outlier payments received by these CMHCs was nearly equal to the total amount all CMHCs received in per diem payments. Of those CMHCs that received outlier payments, 56 percent received an average of more than \$200 per day in outlier payments, 30 percent received more than \$300 per day in outlier payments, 21 percent received more than \$400 per day in outlier payments, and 11 percent received more than \$500 per day in outlier payments.

The outlier policy is intended to compensate providers for treating exceptionally resource-intensive patients. Outlier payments were never intended to be made for all patients and used as a supplement to the per diem payment amount. Our analysis showed that the CMHC average charge per day increased by 31 percent from CY 2001 to CY 2002. We do not believe this increase in charges correlates to an equivalent increase in CMHC costs. Rather, our analysis indicates that the increase in charges was made in order to qualify for outlier payments to cover CMHC operating expenses, not for patients who are exceptionally resource-intensive. We are concerned that if CMHCs continue this pattern of escalating charges, CMHCs will receive a disproportionate share of outlier payments compared to non-CMHCs that do not artificially inflate their charges, thereby limiting outlier money for truly deserving cases.

*Comment:* Although one commenter supported our proposed outlier policy, most commenters, including major hospital associations, did not believe it was sound policy to create separate outlier thresholds based on site of service.

*Response:* Applying the updated cost-to-charge ratios reduced the CMHC charges to better reflect their costs. We are concerned, however, that the impact of updated cost-to-charge ratios may be mitigated by future increases in charges.

We proposed an outlier policy in consideration of the charges on the claims, the cost report data available, and the payments made to CMHCs. Our analysis indicates that CMHCs have dramatically increased their charges between CY 2001 and CY 2002. Between CYs 2001 to 2002, CMHC average per diem charges increased by 31 percent. We believe that in most cases, these increases in charges were not related to a corresponding increase in costs, but rather were designed to enhance outlier payments. We believe the data may indicate a pattern of artificially inflated charges by CMHCs that needs to be addressed. Although we agree that establishing site of service differences is not generally the preferred approach, we continue to believe that establishing two separate outlier percentages is the most appropriate way to address the problem to account for the disparity between hospital and CMHC PHP per diem charges.

For these reasons, for CY 2004, we are establishing a separate CMHC threshold. The threshold is based on the proportion of total OPPS payments CMHCs are estimated to receive in CY 2004. As stated earlier in this section, our analysis indicated that CMHCs were projected to receive 0.36 percent of total OPPS payments in CY 2004, excluding outlier payments. Therefore, 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 have updated our simulations using the final CY 2004 PHP per diem rate. CMHCs are now projected to receive approximately 0.5 percent of estimated total OPPS payments in CY 2004, excluding outlier payments. We have calculated the CMHC outlier threshold to achieve that level of payment. The resulting threshold for CY 2004 is 3.65 percent times the APC 0033 payment amount. We will apply the same outlier payment percentage that applies to hospitals. Therefore, for CY 2004, we will pay 50 percent of the difference between CMHC per diem costs and the CMHC outlier threshold amount. We intend to analyze whether a separate CMHC outlier threshold will continue to be appropriate in future updates.

## **XII. General Data, Billing, and Coding Issues**

We received a number of general comments about OPPS data and related issues to which we respond below. Not all coding questions are addressed,

however. We do not believe that the final rule is the appropriate venue in which to address specific inquiries about billing.

### *OPPS Data*

*Comment:* A commenter indicated that it was difficult to model the August 12, 2003 proposed rule after its release and urged us to provide timely responses to questions about data, data files, and the specifics of the methodology used to generate relative weights, either by having data meetings or by clarifying the language in the final rule and median cost files. The commenter asked that we create a web-site to post responses to questions on data so that the information will be available for all to use. The commenter also asked that a number of data elements be added to the median cost file and the limited data set of claims that is available for public purchase.

*Response:* We have tried to respond to questions on data related issues on a flow basis. However, staff limitations and the need to develop the final rule greatly restrict the amount of time that our staff can devote to replying to these questions. Moreover, creation and maintenance of a web-site to post answers to questions from a few people with special interests is not a good use of our limited staff resources. We would encourage interested parties who have suggestions for improving our data file clarity to contact us with those specifics.

### *Creation of a National Outpatient Coding Governing Body*

*Comment:* A commenter indicated that we should create an outpatient coding governing body that would educate providers regarding the correct use of codes, maintain a web-site on which all guidance on coding would be maintained, and oversee the Medicare fiscal intermediary interpretation of codes to ensure national uniformity across fiscal intermediaries.

*Response:* The HCPCS codes most often used for payment under OPPS are CPT codes, which are created and owned by the American Medical Association (AMA). Providers should look to the many resources available from the AMA for education regarding the correct use of CPT codes. The alphanumeric HCPCS codes are created and owned by us but they form a very limited portion of the services payable under OPPS and, as providers have frequently asked, we attempt to eliminate alphanumeric codes whenever possible and to work with the AMA to create CPT codes for use in both the physician fee schedule and the OPPS.