

submit Medicare claims must cooperate in the conduct of QIO reviews, including providing the QIO with information necessary to its determinations. This often includes providing the QIO with photocopies of patients' medical records.

We published a final rule on October 20, 1992, in the **Federal Register** (57 FR 47779), following notice-and-comment rulemaking, which established a formula for calculating the rate of reimbursement for these photocopy costs incurred by hospitals. Using this formula, we set the rate at 7 cents per page. The regulation requires us to determine a fixed payment amount per page by adding per-page labor costs and per-page supply costs. The regulation also provides for Medicare payment for the costs of first class postage for mailing records to QIOs. As discussed in detail in the October 20, 1992, final rule (57 FR 47779), the payment established by § 476.78 represents an additional payment to hospitals under the prospective payment system (PPS) for photocopy costs. Payment for the equipment and overhead costs associated with furnishing the QIO with required documentation is made under other Medicare payment provisions for capital-related costs and inpatient operating costs.

The formula for calculating the per-page reimbursement rate for photocopies is set forth at § 476.78(c), which provides:

Photocopying reimbursement methodology for prospective payment system hospitals. Hospitals subject to the prospective payment system are paid for the photocopying costs that are directly attributable to the hospitals' responsibility to the QIOs to provide photocopies of requested hospital records. The payment is in addition to payment already provided for these costs under other provisions of the Social Security Act and is based on a fixed amount per page as determined by CMS as follows:

(1) *Step one.* CMS adds the annual salary of a photocopy machine operator and the costs of fringe benefits as determined in accordance with the principles set forth in OMB circular A-76.

(2) *Step two.* CMS divides the amount determined in paragraph (c)(1) of this section by the number of pages that can be reasonably expected to be made annually by the photocopy machine operator to establish the labor cost per page.

(3) CMS adds to the per-page labor cost determined in paragraph (c)(2) of this section the per-page costs of supplies.

Using this formula we established the per-page rate of 7 cents in the October 20, 1992, final rule. The validity of this rule and its reimbursement methodology were challenged in a certified class action by Medicare—participating hospitals, in the U.S. Court of Appeals for the Ninth Circuit. *Queen of Angels/Hollywood Presbyterian Medical Center v. Shalala*, 65 F.3d 1472, 1476 (9th Cir. 1995). The Court of Appeals upheld the validity of our photocopy reimbursement methodology and sustained the lawfulness of the 7 cents per page rate established in the rule.

Due to increases in labor and supply costs, we are increasing the reimbursement rate from 7 cents per page to 12 cents per page in accordance with the established court-approved methodology set forth in § 476.78(c).

Current Photocopy Reimbursement Rate

Under the current regulation, we apply a uniform per-page rate on a nationwide basis to all PPS hospitals that have QIO agreements. We base the calculation on labor and supply costs. The calculation in the current rule, as discussed in the preamble to the October 20, 1992, rule, is based on the following:

- An operator will copy approximately 364,320 pages annually.
 - The salary level of an operator is equivalent to a GS-5 experienced midlevel secretary (\$17,686) plus 27.9 percent fringe benefits (\$4,934) for a total salary of \$22,620.
 - Paper costs are 0.5 cents per page (\$25 per case of paper with 5,000 sheets in a case).
 - Toner and developer costs are 0.5 cents per page.
- The total cost per page is 7 cents.

II. Provisions of the Proposed Regulations

On November 22, 2002, we published a proposed rule (67 FR 70358) in which we proposed to increase the rate of QIO-related photocopy reimbursement from 7 cents to 12 cents per page. We calculated this rate by updating the salary, fringe benefits, and supply figures used in the October 20, 1992, final rule. In accordance with the methodology at § 476.78(c), we considered the following factors in calculating the proposed rate: (1) The labor costs associated with photocopying and (2) the costs of supplies.

A. Labor Costs

Labor costs were calculated consistent with the methodology at § 476.78(c), first, by adding the annual salary of a

photocopy machine operator with the costs of fringe benefits, and second, by dividing that sum by the number of pages that can reasonably be expected to be made in a year.

B. Annual Salary of a Photocopy Machine Operator

In the October 20, 1992, rule, we adopted the salary level for an experienced (GS-5) midlevel secretary in the Federal government as representative of that of a photocopy machine operator. Use of this figure approximated or exceeded the actual salary information for individuals performing these tasks that had been submitted by various commenters. Furthermore, we determined that use of this salary level yielded payments that were more than adequate to ensure a sufficient skill level. The annual salary of \$17,686 used in the October 20, 1992, rule was derived from the U.S. Office of Personnel Management's 1992 General Schedule.

In this final rule, we will continue to deem the salary of a Federal GS-5 midlevel secretary as representative of a photocopy operator's salary; however, we will update the figure to take into account increases in the payment rate of a midlevel secretary. Thus, as discussed in the proposed rule, we are using the GS-5 annual salary of \$28,727 derived from the U.S. Office of Personnel Management's 2002 General Schedule to calculate the revised rate.

C. Fringe Benefits

In the October 20, 1992, final rule, we ascribed the fringe benefits of an employee to be 27.9 percent of the employee's salary, which was the standard percentage dictated by the cost principles set forth in the Office of Management and Budget (OMB) Circular A-76. While there may be other yardsticks to measure this component of costs, we find this to be a reasonable resource since the thrust of this OMB circular is to help the government compare potentially incurred costs to determine whether the costs can be more economically incurred internally or through contract with a commercial source. Therefore, we continue to use OMB Circular A-76 to calculate the annual fringe benefit cost. Accordingly, fringe benefits were calculated in the November 22, 2002, proposed rule based on 29.7 percent of the GS-5 salary as outlined in the OMB Circular A-76 Transmittal Memorandum 19—FY 2000 estimate. Thus, the annual fringe benefit cost is \$8,532 (\$28,727 * 29.7 percent).