

raised in those comments and our responses follow:

*Comment:* One QIO commented that the November 22, 2002, proposed rule would increase pass-through photocopy costs well beyond the amount budgeted in their seventh round Medicare contract. This increase could cause the QIO to exceed the total cost of its contract.

*Response:* Increased photocopying costs are included in the seventh round scope of work funding level. However, these costs are a true pass-through; that is, CMS is responsible for paying providers, and CMS uses its QIO contractors as the vehicle to pay them. Although CMS does not anticipate increasing the total cost of each QIO contract immediately upon publication of this rule, any time a QIO believes it will exceed the total cost of its contract, the QIO should immediately notify CMS (see "Limitation of Cost" clause in the seventh round contract). If the excess costs are the result of increased photocopying reimbursement, CMS will exercise one of the four options CMS always uses in similar cases—we will either request that money be added to the contract, reduce work, ask the QIO to move funds between cost centers or line items, or some combination of these options. In no case will CMS expect the QIO to absorb any excess pass-through with existing contract funds without a corresponding reduction or shifting in level of effort.

*Comment:* One hospital commented that the method for calculating labor costs described in section II.A of the preamble of the November 22, 2002, proposed rule only provides for the cost of a photocopy machine operator, while in actual practice a significant portion of records reproduction time should be attributed to record retrieval, review, and re-filing by a records technician. The hospital further stated its pay scale for a records technician ranges from \$8.30 to \$11.22 per hour.

*Response:* We agree with this comment. However, in section II.D of the preamble of the November 22, 2002, proposed rule, we explained how we calculated the estimated number of pages copied annually. As discussed in detail at 57 FR 47780, this estimate was adjusted before publication of the current regulation to take into account the appropriate amount of labor time required to perform all of the steps that are performed in addition to the actual photocopying, such as logging in the request, retrieving the record, re-filing the record, and mailing copies. Thus, the term "photocopy machine operator" can reasonably be interpreted to include records technicians or anyone else

directly involved in the hands-on process. Further, section II.B of the preamble of the November 22, 2002, proposed rule explains that we used an updated representative annual salary of \$28,727, or an hourly rate of \$13.81, which exceeds this provider's salary range for a records technician. Therefore, we have not increased the per-page reimbursement rate based on this comment.

*Comment:* Another commenter questioned the raw data we applied to the approved methodology for calculating the per-page cost of photocopying medical records. Although this commenter strongly supported the three primary objectives of the rule (to increase reimbursement, extend provisions of the rule to all PPS providers, and allow for periodic adjustment of rates without notice and comment rulemaking), the commenter contended the rate should be significantly higher than the proposed 12 cents per page.

In particular, this organization stated the proposed labor rate is insufficient to retain qualified personnel in the private sector, fringe benefit rates are too low, the number of pages copied annually is too high due to recent Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements, and the cost of supplies is too low as a result of comparing GSA bulk purchase costs to actual costs available to private sector companies. The commenter believes we used the October 20, 1992, regulation as a starting point for current calculations and that regulation was based on artificially low cost assumptions.

The commenter supports extending the proposed reimbursement methodology to non-hospital PPS providers and also supported the periodic review provisions. However, the commenter asked us to amend the rate review section to require such a review at no more than 5-year intervals.

*Response:* In this rule, we used recent cost data to calculate the proposed per-page photocopy costs and did not simply build on 1992 data. However, we believe that the data used in both this rule and the 1992 rule is reasonable and accurately reflects the costs associated with this responsibility. Further, we believe the proposed representative salary and fringe benefit rates of \$28,727 and 29.7 percent, respectively, are reasonable and sufficient to attract and retain qualified personnel. The fringe benefit (F/B) rate, in particular, is very close to the mean F/B rate of the numerous contractors we reviewed before publication of the November 22, 2002, proposed rule, to validate the A-76 Transmittal Memorandum. Although

the 29.7 percent F/B rate is based on the 2000 OMB guidance, we have applied it to a higher base figure and see no reason to adjust it further. The \$28,727 salary estimate represents a mid-level GS-5 secretary salary in 2002, which we believe is a fair and accurate comparison to the skill level necessary to process medical record photocopying requests.

The estimated number of pages has remained constant since the October 20, 1992, regulation was published. Although the commenter may be correct that HIPAA privacy requirements will modestly reduce the maximum number of pages an operator or technician can copy per year, it is still too soon to calculate the exact effect of that legislation. Further, we believe that increases in the speed and simplicity of reproduction hardware over the last 10 years may offset any decreases in volume resulting from HIPAA.

The comment that the cost of supplies to non-governmental organizations exceeds the GSA catalogue price may be valid. However, the GSA price provides a solid benchmark that does not vary widely by vendor or product quality. Further, our proposed overall reimbursement rate per page amounts to a 7 percent annual increase over the 10 years since publication of the previous rule. This is approximately twice the inflation index rate and adequately compensates for any modest differences between the government and private-sector costs of supplies.

We believe the suggestion to include a maximum 5-year interval between review periods has some merit but may be unnecessary. By eliminating the need for notice and comment rulemaking, it becomes unlikely that any future rate adjustment will take longer than 5 years and potentially could be more frequent.

#### IV. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule with only one minor change. We have deleted the proposed revision of § 476.78(b)(4), thus leaving that section unchanged from the existing text. The proposed amendment, replacing "hospital" with "provider," had an unintended consequence of appearing to extend the requirement to provide QIOs with discharge notices from hospitals to other inpatient providers. That is neither the purpose nor the intent of this final rule.

#### V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, agencies are required to provide 60-day notice in the **Federal**