

## HOME HEALTH AGENCY COST LIMITS OUTLIERS LABOR AND NONLABOR PORTIONS HIGHS AND LOWS—Continued

Urban	Labor low	Labor high	Nonlabor low	Nonlabor high
Physical therapy .....	41.77	147.54	6.69	28.34
Speech pathology .....	40.28	160.19	7.36	37.65
Occupational therapy .....	35.69	161.74	6.22	30.35
Medical social services .....	36.42	350.59	6.85	62.15
Home health aide .....	16.18	72.55	2.52	17.07

*Comment:* Two commenters recommended that we use data from hospital-based agencies in the calculation of the limits. The commenters believe that the calculation of the limits using only freestanding facilities does not reflect the higher costs associated with hospital-based HHAs.

*Response:* Section 1861(v)(1)(L)(i) of the Act specifies that the Secretary is to establish a single schedule of HHA cost limits based on the cost experience of freestanding agencies. We have no discretion to include hospital-based providers in the calculation of the HHA limits.

*Comment:* A commenter suggested that the use of settled cost reports ignores the higher claims presented before the Provider Reimbursement Review Board (PRRB) and that these claims should be included in the database for calculation of the HHA cost limits.

*Response:* The use of settled cost reports in developing the HHA cost limits was established for cost reporting periods beginning on or after July 1, 1992 (see 57 FR 29411). Before July 1, 1992, HHA databases included data from both settled and as-submitted cost reports. We were able to begin using settled cost report data as a result of revised CPEP standards that required Medicare fiscal intermediaries to settle the HHA cost reports sooner than was required under former standards. Consequently, as explained in our July 1, 1992 notice with comment period, settled data are available much sooner than in previous cost reporting periods, and we believe the data accurately reflect current conditions in the health care industry. The use of settled cost reports allows us to eliminate misstated data including nonallowable costs and noncovered visits that inevitably result from using as-submitted cost reports. (See 57 FR 29410.)

Providers that file an appeal before the PRRB must have received a Notice of Program Reimbursement for the fiscal year in question, before filing the appeal. During the cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, on an annual basis, fewer than 2 percent of certified

HHAs submitted appeals to the PRRB. If an appeal was decided before we develop the annual HHA per-visit cost limits, the final data would be entered into the database. In those cases in which the PRRB appeal and administrative review processes are not completed until after we have developed the annual HHA per-visit cost limits, the settled data from the cost reports in question would be entered. Including the adjusted data that may result from PRRB appeals into the database would have no significant effect on the calculation of the cost limits. Moreover, since the cost limits are set prospectively, it would be neither necessary nor administratively feasible to include adjusted data resulting from the completed appeals process into the HHA database used to develop the annual limits. We note that the HHA per-visit limits constitute an estimated national average of costs, and individual providers are free to pursue exceptions to these averages where justified.

*Comment:* Several commenters stated that the limits do not reflect the costs associated with the implementation of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Public Law 100-203) quality assurance provisions, specifically, the requirements for home health aide training and competency evaluation programs. They asserted that no additional amount has been added to the HHA limits to account for these costs.

*Response:* Section 1891(a)(3) of the Act requires HHAs to comply with the requirements relating to home health aide training and competency programs, established by OBRA '87. The cost-per-visit data used in the calculations of the cost limits effective on July 1, 1993 were extracted from settled Medicare cost reports for periods ending on or after June 30, 1989, and before May 31, 1991. We published regulations on August 14, 1989 at 42 CFR § 484.36 to require that HHAs establish a competency evaluation program for home health aides by February 14, 1990 (see 54 FR 33357-33360 and 33372). Therefore, the costs associated with home health aide training and competency evaluation programs are included in this database.

However, if a provider believes that it has incurred additional costs not included in the limits relating to home health aide training and competency evaluation programs, the provider may apply for an exception to the cost limits under the exceptions process outlined in § 413.30. This situation could be recognized as an "extraordinary circumstance" exception under § 413.30(f)(2).

*Comment:* A commenter indicated that the database from which the HHA cost limits were developed was not available for public use when the regulation was issued on July 8, 1993.

*Response:* It is our standard practice to make available to the public the database used to construct the cost limits. HCFA's Bureau of Data Management and Strategy annually publishes a "Public Use Files Catalog" that identifies available Medicare/Medicaid data files and gives instructions on how to obtain them. The database used to construct the cost limits outlined in the July 8, 1993 notice (that is, *Medicare HHA Cycle 11 Data Set*, containing data for cost reporting periods ending on June 30, 1989, and before May 31, 1991) was available from the Bureau of Data Management and Strategy, HCFA, to the public, on the date the regulation was published. The HHA database is available on tape or diskette for \$680. For further information on obtaining data used in calculating the HHA cost limits, see section VI.C of this notice.

### 3. Market Basket

*Comment:* Several commenters believe that the market basket factors that have been used to update the 1990 cost data seemed to understate home care market basket cost increases of between 5 to 7 percent for the 1992-1993 period and need to be updated for current weights and revised wage-price proxies. Specifically, the commenters believe that the market basket factors fail to account properly for increases in the Federal minimum wage, base rates for workers' compensation premiums, reimbursement for mileage, Federal gasoline tax, computers to submit claims via electronic media communications, additional A&G costs,