

and FICA taxes. They indicated that there is evidence that the market basket factors now used to update the cost limits are too low and that appropriate alternatives exist and are being used to make budget projections for the Administration and Congress.

*Response:* For the last several years, the HHA input price index (market basket) has increased at the fastest rate of all the market basket indices for the Medicare program. The increase in the market basket reflects the weights and wage-price proxies in the market basket to capture the special market conditions for HHA services (such as the shortage of several categories of licensed health professionals providing HHA services). The compensation and nonlabor proxies used in the market basket include the effects of taxes on the rates of increase. Wages and salaries include employer contributions (payroll taxes) for social insurance (old age, survivors, disability and hospital insurance). The wage and salary category also includes State unemployment insurance, supplemental unemployment insurance and workmen's compensation. The price proxies for transportation and utilities include the relevant sales taxes. Further, the price proxy for rental and leasing costs includes the impact of all costs including property taxes.

The market basket factors used to update the cost limits are consistent with, but not identical to, the cost-per-visit budget projections for the Administration and Congress. The HHA market basket is designed to measure price inflation for inputs used to produce HHA services. It, therefore, does not take into account changes in the quantity, mix or intensity of services per visit. In contrast, the Administration's budget projections take into account the change in mix of types of visits and the effects of productivity changes on per-visit costs. Productivity changes are a major determinant of cost-per-visit increases and are specifically excluded from the HHA market basket.

We believe that it would be appropriate to do a special study of the weighting and wage-price proxies for the HHA market basket. We intend to begin such a study in the near future, and we welcome public comments on data sources for weights and wage-price proxies.

#### 4. Wage Index

*Comment:* One commenter stated that the wage index factors used in the calculation of the cost limits effective July 1, 1993 are lower than the July 1, 1992 cost limits in almost all cases. In addition, the commenter stated that the

Omnibus Budget Reconciliation Act of 1990 (OBRA '90) mandates use of the most recent hospital wage index for calculation of the labor portion of the cost limits, but it also requires that aggregate payments to HHAs be budget neutral. The commenter asserted that the use of a lower budget neutrality factor than in the previous schedule of limits accounted in itself for a reduction of approximately 2.5 percent in the cost limits. In addition, the commenter noted that the budget neutrality factor of 2.7 percent used in calculating the limits effective July 1, 1993 is a considerable reduction from the 5.9 percent used in calculating the limits effective July 1, 1992 and fails to provide Congressionally mandated budget neutrality between the 1982 and the 1988 hospital wage indexes.

*Response:* Section 4207(d)(1) of OBRA '90 amended section 1861(v)(1)(L)(iii) of the Act to require that in establishing the HHA schedule of limits annually on July 1 of each year we are to use the current hospital wage index. To lessen the effect on individual HHAs that would have been caused by implementing this requirement immediately, section 4207(d)(3) of OBRA '90 provided for a 2-year transition period during which we would use a blend of 1982 and 1988 hospital wage data. As required by section 1861(v)(1)(L)(iii) of the Act, the limits effective for cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994, use the FY 1993 hospital wage index, that is the hospital wage index effective for hospital discharges on or after October 1, 1992, which is based entirely on 1988 wage survey data (see 58 FR 36750). Thus, although the wage indices used in calculating the limits effective for cost reporting periods beginning on or after July 1, 1993 are in many cases lower than in the past, they reflect the latest available actual wages.

Section 4207(d)(2) of OBRA '90 requires that, in updating the wage index used for establishing the HHA limits, aggregate payments will remain the same as they would have been if the wage index had not been updated. To meet this requirement, as explained in detail in our July 8, 1993 notice with comment period, we determined that it was necessary to apply a budget neutrality adjustment factor of 1.027 (that is, an increase of 2.7 percent) to the labor-related portion of the cost limits (58 FR 36748-36749). However, for this notice, we have recalculated the budget neutrality adjustment factor and have determined that a factor of 1.067 should be applied (that is, a 6.7 percent increase). The change in the budget

neutrality adjustment is attributable to the revised limits that have resulted from our validation of the HHA database.

*Comment:* A commenter stated that a persistent problem in the application of the cost limits that is made more difficult by the new limits are that HHAs, like hospitals, are sometimes assigned to the "wrong" geographic area. The commenter suggested that we consider basing hospital wage indices on the wage levels paid by neighboring providers and that wage levels should be standardized according to some predefined occupational mix.

*Response:* Under section 1886(d)(3)(E) of the Act, the Secretary annually establishes a wage index for the purposes of adjusting payment rates for hospital inpatient services to reflect wages in a geographic area relative to the national average. Section 1861(v)(1)(L)(iii) of the Act requires that, in establishing the HHA schedule of limits, the Secretary is to use the current hospital wage index.

Almost from the beginning of the hospital prospective payment system, we have received comments from the hospital industry objecting to the use of labor market areas based on Metropolitan Statistical Areas (MSAs) established by the Office of Management and Budget to construct the wage index. The Prospective Payment Assessment Commission (ProPAC) has also recommended changes in how the labor market areas used to construct the hospital wage index should be defined. We recognize that, as currently structured, there are certain inefficiencies inherent in the MSA-based system. In light of these concerns, we have continued to examine a variety of options for revising wage index labor market areas.

On May 27, 1994, we published a proposed rule in the **Federal Register** (59 FR 27708) that detailed changes to the hospital prospective payment system for FY 1995. In the proposed rule, we discussed in detail issues raised by commenters concerning a "nearest neighbor" approach to the wage index, as recommended by ProPAC, and our research and analysis on alternative methodologies for defining labor market areas (59 FR 27724 through 27732). These alternatives are still under review, and no final decision has been made at this time to use a different methodology in determining future payment rates.

#### 5. Additional Costs/Exceptions

*Comment:* A commenter suggested that new HHAs be exempt from the limits for the first two full year cost