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Extension of Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital Program

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Related Change Request (CR) Number: 12970
Related CR Release Date: December 9, 2022
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Related CR Transmittal Number: R11740OTN
Implementation Date: No later than November 1, 2022

Related CR Title: Extensions of Certain Temporary Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital (MDH) Program under the Inpatient Prospective Payment System (IPPS) provided by the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023

Note: We revised this Article due to a revised CR 12970. CMS is giving your MAC 60 days to reprocess claims affected by the CR. We show this change in dark red on page 2. We also revised the CR release date, transmittal number, and the web address of the CR. All other information is the same.

Provider Types Affected

This MLN Matters Article is for low-volume hospitals and MDHs billing Medicare Administrative Contractors (MACs) for services they provide to Medicare patients.

Provider Action Needed

Make sure you know about:

- Sending a written request to your MAC by November 16 to get the applicable low-volume hospital payment adjustment
- Finding out if you're eligible for continued MDH status

Background

The temporary low-volume hospital payment adjustment and the MDH Program were to end on October 1, 2022. Division D, Sections 101 and 102 of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (Public Law 117-180) extends these temporary changes through December 16, 2022. These temporary changes are under Medicare's Fee-for-Service IPPS.

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Your MAC will reprocess IPPS claims affected by this change with a discharge date on or after October 1, 2022, through the implementation of this change request within 60 days of the implementation date.

Low-Volume Hospitals – Criteria and Payment Adjustments for FY 2023

The regulations at 42 CFR 412.101 implement the low-volume hospital payment adjustment. The Bipartisan Budget Act of 2018 modified the definition of a low-volume hospital and the methodology for calculating the payment adjustment for low-volume hospitals under Section 1886(d)(12) of the Social Security Act (the Act) for FYs 2019 through 2022. Under these changes, to qualify, a hospital must have less than 3,800 total discharges and be located more than 15 road miles from the nearest IPPS hospital, and the applicable percentage increase is based on a continuous, linear sliding scale ranging from an additional 25% payment adjustment for low-volume hospitals with 500 or fewer discharges to 0% additional payment for low-volume hospitals with more than 3,800 discharges. CMS shows this as follows:

- For low-volume hospitals with 500 or fewer total discharges, the low-volume hospital payment adjustment is 0.25
- For low-volume hospitals with more than 500 total discharges but less than 3,800 total discharges, the low volume hospital payment adjustment is calculated as 0.25 - [0.25/3300] × (number of total discharges - 500) = (95/330) - (number of total discharges/13,200)

Section 1886(d)(12)(C)(i) of the Act, as amended by Public Law 117-180, states that for the portion of FY 2023 beginning on October 1, 2022, and ending on December 16, 2022 (in other words, occurring before December 17, 2022), a low-volume hospital must be more than 15 road miles from another subsection (d) hospital. It also states that for the portion of FY 2023 occurring before December 17, 2022, a low-volume hospital must have less than 3,800 discharges during the fiscal year. (We note the provisions of Public Law 117-180 didn't change the meaning of the term "discharge" as specified at 1866(d)(12)(C)(ii) of the Act.)

We use the hospital's most recently submitted cost report to determine if the hospital meets the discharge criterion to qualify for the low-volume payment adjustment in the current year. We use cost report data to determine if a hospital meets the discharge criterion because it's the best available data source that has information on both Medicare and non-Medicare discharges.

To get a low-volume payment adjustment for FY 2023 discharges occurring before December 17, 2022, consistent with our previously established process, a hospital is required to provide written request to its MAC. This request must contain sufficient documentation to establish that the hospital meets the applicable mileage and discharge criteria so that the MAC can determine if the hospital qualifies as a low-volume hospital under the provisions of Section 101 of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023. Under this procedure, a hospital that got the low-volume hospital payment adjustment in FY 2022 may continue to get a low-volume hospital payment adjustment for FY 2023 discharges occurring before December 17, 2022, without reapplying if it continues to meet **both** the applicable discharge criterion and the mileage criterion (described above). However, such a hospital must

send written verification stating that it continues to meet the applicable mileage criterion for FY 2023 discharges occurring before December 17, 2022, and that, based upon the most recently submitted cost report, the hospital meets the discharge criterion applicable for FY 2023 discharges occurring before December 17, 2022.

Note: If a hospital submitted a written request for low-volume hospital status for FY 2023 under the process described in the FY 2023 IPPS/Long-Term Care Hospital (LTCH) PPS final rule before the enactment of Public Law 117-180 and that request was approved, it doesn't need to provide any additional written verification to its MAC to get the low-volume hospital payment adjustment under the provisions of Public Law 117-180.

In order for the applicable low-volume percentage increase to be applied to payments for its FY 2023 discharges occurring before December 17, 2022, a hospital's written notification must be received by its MAC no later than November 16, 2022. If a hospital's request or written verification for low-volume hospital status for FY 2023 discharges occurring before December 17, 2022, is received after this date, and if the MAC determines the hospital meets the criteria to qualify as a low-volume hospital, the MAC will apply the low-volume hospital payment adjustment to determine the payment for the hospital's FY 2023 discharges occurring before December 17, 2022, effective prospectively within 30 days of the date of the MAC's low-volume hospital status determination.

Any hospital that doesn't meet either the discharge or mileage criteria isn't eligible to get a low-volume payment adjustment for FY 2023 discharges occurring before December 17, 2022.

Consistent with current law, the low-volume hospital definition and payment adjustment methodology will revert back to the policy established under statutory requirements that were in effect before the amendments made by the Affordable Care Act and extended through subsequent legislation, as discussed in the FY 2023 IPPS/LTCH PPS final rule (87 FR 49061 through 49062). For FY 2023 discharges occurring on or after December 17, 2022, to qualify for the low-volume hospital payment adjustment of 25%, the hospital must have less than 200 total discharges and be located more than 25 road miles from the nearest IPPS hospital.

Extension of the MDH Program

a. General

Section 102 of the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 extends the MDH program through December 16, 2022.

b. Continuity of MDH Status

Generally, providers that were classified as MDHs as of September 30, 2022, will continue to be classified as MDHs effective October 1, 2022 through December 16, 2022, with no need to reapply for MDH classification. There is 1 exception: **MDHs that requested a cancellation of their rural classification under 42 CFR 412.103(b):** To meet the criteria to become an MDH, generally a hospital must be located in a rural area. To qualify for MDH status, some MDHs may

have reclassified as rural under the regulations at 42 CFR 412.103. With the anticipated expiration of the MDH provision, some of these providers may have requested a cancellation of their rural classification.

The regulations at 42 CFR 412.92(b)(2)(v) allowed MDHs to apply for classification as a Sole Community Hospitals (SCH) by September 1, 2022, (that is, 30 days prior to the anticipated expiration of the MDH program) in anticipation of the MDH program expiration, and if approved, to be granted such status effective with the expiration of the MDH program. However, since the MDH program didn't, in fact, expire as of October 1, 2022, any hospitals that applied in this manner wouldn't be classified as SCH as of October 1, 2022 and would retain its MDH classification.

Any provider that falls within the above exception won't be eligible for continued MDH status. All other hospitals with MDH status as of September 30, 2022 will continue to be classified as MDHs effective October 1, 2022 through December 16, 2022. Providers that fall within the exception mentioned above would have to reapply for MDH classification under the regulations at 42 CFR 412.108(b) and meet the classification criteria at 42 CFR 412.108(a) in order to be classified as an MDH.

Your MAC will send you a letter if you fall within the above exception or if you applied for SCH classification per the regulations at §412.92(b)(2)(v). That letter will give you information specific to how you're affected by the MDH program extension and your status under the extension of the MDH program.

Starting on December 17, 2022, all hospitals that previously qualified for MDH status will no longer have MDH status.

Note: The regulations at 42 CFR 412.108(b)(5) require MACs to evaluate on an ongoing basis whether or not a hospital continues to qualify for MDH status. However, due to the COVID-19 public health emergency (PHE), we issued a blanket waiver of certain MDH eligibility requirements at 42 CFR 412.108(a). When the PHE ends, MACs will resume their standard practice for evaluation of all eligibility requirements.

More Information

We issued CR 12970 to your MAC as the official instruction for this change.

For more information, find your MAC's website.

Document History

Date of Change	Description
December 9, 2022	We revised this Article due to a revised CR 12970. CMS is giving your MAC 60 days to reprocess claims affected by the CR. We show this change in dark red on page 2. We also revised the CR release date, transmittal number, and the web address of the CR. All other information is the same.
October 21, 2022	Initial article released.