

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Transmittal 11904	Date: March 16, 2023
	Change Request 13122

SUBJECT: Implementation of Consolidated Appropriations Act (CAA) of 2023, Section 4143: Waiver of Cap on Annual Payments for Nursing and Allied Health Education Payments

I. SUMMARY OF CHANGES: The purpose of this Change Request (CR) is to implement section 4143 of the Consolidated Appropriations Act (CAA) of 2023, which adjusts certain payments made under CR 11642 and CR 12407 for CYs 2010 through 2019.

EFFECTIVE DATE: December 29, 2022

**Unless otherwise specified, the effective date is the date of service.*

IMPLEMENTATION DATE: December 28, 2023

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-Only One Per Row.

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
N/A	N/A

III. FUNDING:

For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

One Time Notification

Attachment - One-Time Notification

Pub. 100-20	Transmittal: 11904	Date: March 16, 2023	Change Request: 13122
-------------	--------------------	----------------------	-----------------------

SUBJECT: Implementation of Consolidated Appropriations Act (CAA) of 2023, Section 4143: Waiver of Cap on Annual Payments for Nursing and Allied Health Education Payments

EFFECTIVE DATE: December 29, 2022

**Unless otherwise specified, the effective date is the date of service.*

IMPLEMENTATION DATE: December 28, 2023

I. GENERAL INFORMATION

A. Background: The purpose of this Change Request (CR) is to implement section 4143 of the Consolidated Appropriations Act (CAA) of 2023, which adjusts certain payments made under CR 11642 and CR 12407 for Calendar Years (CYs) 2010 through 2019.

B. Policy: Section 541 of the Balanced Budget Refinement Act (BBRA) of 1999 provides for additional payments to hospitals for costs of nursing and allied health education associated with services to Medicare+Choice enrollees. Hospitals that operate approved nursing or allied health education programs and receive Medicare reasonable cost reimbursement for these programs would receive additional payments. Section 541 limits total spending under the provision to no more than \$60 million in any CY. (In this document, we refer to the total amount of \$60 million or less as the payment “pool”.) Section 541 also provides that direct Graduate Medical Education (GME) payments for Medicare+Choice utilization will be reduced to the extent that these additional payments are made for nursing and allied health education programs.

Section 512 of the Benefits Improvement and Protection Act (BIPA) of 2000 changed the formula for determining the additional amounts to be paid to hospitals for Medicare+Choice nursing and allied health costs. Under Subsection (§)541 of the BBRA, the additional payment amount was determined based on the proportion of each individual hospital’s nursing and allied health education payment to total nursing and allied health education payments made to all hospitals. However, this formula did not account for a hospital’s specific Medicare+Choice patient census. Section 512 of the BIPA revised this payment formula to specifically account for each hospital’s Medicare+Choice patient load.

The regulations at 42 Code of Federal Regulation (CFR) §413.87 codified these statutory provisions. This provision is effective for portions of cost reporting periods occurring in a CY, beginning with CY 2001.

We note that Medicare + Choice is now known as Medicare Advantage (MA). We refer to nursing and allied health education MA payments from this point forward in this document.

The purpose of this CR is to implement section 4143 of the CAA of 2023, which adjusts certain payments made under CR 11642 and CR 12407 for CYs 2010 through 2019. For general background on Nursing and Allied Health Medicare Advantage (NAH MA) payment policy, refer to CR 11642.

Section 4143 of the CAA 2023 (enacted December 29, 2022), called “Waiver of Cap on Annual Payments for Nursing and Allied Health Education Payments,” amends section 1886(l)(2)(B) of the Act to state that for portions of cost reporting periods occurring in each of CYs 2010 through 2019, the \$60 million payment limit, or payment “pool,” *shall not apply* to the total amount of additional payments for nursing and allied health education to be distributed to hospitals that, as of the date of enactment of this clause, are operating a school of nursing, a school of allied health, or a school of nursing and allied health. As mentioned above, section 541 of the BBRA limited total spending under the NAH MA provision to no more than \$60 million in any CY. Under CR 11642 issued on November 19, 2020, CMS instructed MACs to recalculate historical payments to hospitals consistent with the \$60 million limit per calendar year, and make applicable

adjustments to NAH MA payments. In this CR, we provide a method for the MACs to implement section 4143 in the absence of the \$60 million limit on the pool.

In addition, section 541 of the BBRA 1999 provides that Direct Graduate Medical Education (DGME) payments for MA utilization will be reduced to the extent that these additional payments are made for nursing and allied health education programs. However, section 4143 of the CAA 2023 also states that in not applying the \$60 million limit for each of 2010 through 2019, the Secretary shall not take into account any increase in the total amount of such additional payment amounts for such nursing and allied health education for portions of cost reporting periods occurring in the year. Pursuant to the requirement set out at section 4143(b) of CAA 2023, MACs shall not change the DGME MA percent reduction amounts specified in CR 11642 for CYs 2010 through 2018, and CR 12407 for CY 2019 (and CR 12596 which corrected the DGME MA percent reduction related to CY 2018 specified in CR 11642).

Implementation Instructions:

Upon issuance of this CR, MACs shall halt processing of Notice of Program Reimbursements (NPRs) that used CRs 11642, 12596, and 12407. Instead, this CR provides a new table attachment with recalculated pool amounts for CYs 2010 through 2019. MACs shall first determine whether hospitals that received revised payments under CR 11642 were still receiving NAH MA payments on an interim basis as of December 29, 2022. For example, if a hospital's payments for a NAH program(s) were adjusted under CR 11642, but that hospital since closed all of its NAH programs, that hospital would not be eligible under section 4143 to receive adjusted payments for CYs 2010 through 2019, even if the hospital itself has remained operational.

Second, MACs shall use the table below to recalculate an eligible hospital's NAH MA payment for portions of cost reporting periods occurring in CY 2010 through CY 2019. MACs shall do this for portions of cost reporting periods occurring between CYs 2010 and 2019 that are still open or within the 3-year reopening period as of the issuance date of this CR. The formula is:

$$\left(\frac{\text{Hospital NAH pass-through payment} / \text{Hospital Part A Inpatient Days}}{\text{National NAH pass-through payment} / \text{National Part A Inpatient Days}} \right) * \text{National MA Inpatient Days} * \text{Current Year Payment Pool}$$

Third, MACs shall determine the revised amount for a hospital in a CY by subtracting the NAH MA payment amount determined under CR 11642 (or CR 12596 or CR 12407 as applicable) for a CY from the recalculated NAH MA amount in the second step above. MACs shall not make any adjustments to or recalculations of the MA DGME payments.

MACs shall not use Attachment A of CR 11642 for any purpose in this CR.

See attachment to this CR, called "CALCULATION TABLE FOR SECTION 4143 OF CAA OF 2023 FOR PORTIONS OF COST REPORTS IN CYS 2010 THROUGH 2019."

MACs shall only implement this CR to hospitals that, as of the date of enactment of CAA 2023 (December 29, 2022) were receiving MA NAH and Part A NAH pass-through payments on an interim basis. (**Note:** An eligible hospital may be receiving both DGME and NAH payments; however, under this CR, only NAH MA payments can be eligible for recalculation).

For each portion of a cost reporting period occurring in CYs 2010 through 2019 that are still open or reopenable, MACs shall adjust the NAH MA payment amount on CMS Form 2552-10 Worksheet E, Part A, line 53 (or on CMS Form-2552-96 Worksheet E, Part A, line 11.01).

Settled Cost Reports: If cost reports have already been settled (Notice of Program Reimbursement (NPR)), MACs shall issue reopening notices for NPR'd cost reports, and identify payments owed on those cost reports, and issue adjustment reports and revised NPRs within one year of the effective date of this

Transmittal. For NPRs in progress as of issuance of this CR, and there is not enough time to correct payment and still make the NPR deadlines, MACs can issue these up to 60 days past the NPR due date and not be counted as late for timeliness purposes. MACs shall reopen regardless of usual materiality thresholds.

Cost Reports Not Yet Settled: If the cost reports have not yet been settled, the MAC shall implement this CR as part of the normal interim rate review, desk review, and settlement processes within existing timeframes.

Note: MACs shall contact CMS, or CMS shall contact MACs, if circumstances arise on a case by case basis necessitating reopenings, and/or settlements, and/or payments according to a different timeframe than otherwise specified above.

II. BUSINESS REQUIREMENTS TABLE

"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.

Number	Requirement	Responsibility									
		A/B MAC			D M E M A C	Shared- System Maintainers				Other	
		A	B	H H H		F I S S	M C S	V M S	C W F		
13122.1	Upon issuance of this CR, MACs shall halt processing of NPRs that used CRs 11642, 12596, and 12407.	X									
13122.2	MACs shall only implement this CR to hospitals that, as of the date of enactment of CAA 2023 (December 29, 2022) were still receiving MA N&AH and Part A N&AH pass-through payments on an interim basis.	X									
13122.3	MACs shall follow the instructions in this CR to calculate for applicable hospitals the correct MA nursing and allied health education add-on for portions of cost reporting periods occurring in CYs 2010 through 2019 of cost reports still open or reopenable as of the issuance date of this CR.	X									
13122.4	MACs shall not make any adjustments to or recalculations of the MA DGME payments, and MACs shall not use Attachment A of CR 11642 for any purpose in this CR.	X									
13122.5	MACs shall follow the timeframes and instructions specified in the CR for implementation in settled and not yet settled cost reports.	X									

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			D M E D I	C M E D I
		A	B	H H H		
13122.6	CR as Provider Education: Contractors shall post this entire instruction, or a direct link to this instruction, on their Web sites and include information about it in a listserv message within 5 business days after receipt of the notification from CMS announcing the availability of the article. In addition, the entire instruction must be included in the contractor's next regularly scheduled bulletin. Contractors are free to supplement it with localized information that would benefit their provider community in billing and administering the Medicare program correctly.	X				

IV. SUPPORTING INFORMATION

Section A: Recommendations and supporting information associated with listed requirements: N/A

"Should" denotes a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: All other recommendations and supporting information: N/A

V. CONTACTS

Pre-Implementation Contact(s): Miechal Kriger, 4434143009 or miechal.kriger@cms.hhs.gov

Post-Implementation Contact(s): Contact your Contracting Officer's Representative (COR).

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

ATTACHMENTS: 1

**CALCULATION TABLE
FOR SECTION 4143 OF
CAA OF 2023 FOR
PORTIONS OF COST
REPORTS IN CYS 2010
THROUGH 2019**

	Section 4143 CAA POOL	FFS NAH PAYMENTS	FFS INPATIENT DAYS	MA INPATIENT DAYS	(FFS NAH/FFS INPT DAYS) X MA INPT DAYS	PERCENT REDUCTION TO MA DGME PAYMENTS
CY 2010	\$62,997,033	\$213,862,393	45,409,814	3,114,194	\$14,666,631	9.77%
CY 2011	\$66,438,422	\$226,645,225	49,217,935	3,825,354	\$17,615,494	7.85%
CY 2012	\$76,035,672	\$240,958,503	55,551,047	4,376,532	\$18,983,667	7.16%
CY 2013	\$84,753,118	\$245,304,017	54,965,956	4,945,724	\$22,071,952	6.41%
CY 2014	\$93,598,893	\$248,506,989	54,405,730	5,360,315	\$24,484,107	5.86%
CY 2015	\$102,448,386	\$247,076,161	55,223,064	5,907,933	\$26,432,967	5.32%
CY 2016	\$110,412,962	\$253,272,740	55,717,901	6,376,818	\$28,986,630	4.99%
CY 2017	\$119,165,456	\$249,546,528	58,599,068	7,241,576	\$30,838,548	4.44%
CY 2018	\$130,335,289	\$267,714,849	61,066,487	7,888,809	\$34,584,457	4.12%
CY 2019	\$140,589,366	\$262,043,840	62,649,285	8,481,459	\$35,475,490	4.07%