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Moratorium on Classification of Long-Term Care Hospitals (LTCH) or Satellites/Increase in Certified LTCH Beds

Note: This article was revised on January 25, 2018, to update Web addresses. All other information remains the same.

Provider Types Affected

LTCHs/hospitals who submit claims to Medicare contractors (Fiscal Intermediaries (FIs), and/or Part A/B Medicare Administrative Contractors (A/B MACs)) for services provided to Medicare beneficiaries.

What Providers Need to Know

- On December 29, 2007, the Medicare, Medicaid, and SCHIP Extension Act (MMSEA) established a **three-year moratorium** on the designation of **new LTCHs or satellites**, and **on an increase of beds** in an existing LTCH.
- Be aware that statute creates certain **limited exceptions to the moratorium**. The Centers for Medicare & Medicaid Services (CMS) adopted an Interim Final Rule with Comments on May 22, 2008 to implement the LTCH moratorium provisions of the MMSEA.
- The CMS Regional Offices (RO) **will determine whether a facility qualifies for an exception to the moratorium**.
- A CMS Memorandum on this subject (Moratorium on Classification of Long-Term Care Hospitals (LTCH) or Satellites/Increase in Certified LTCH Beds) provides a detailed summary of the moratorium and its exceptions. This memorandum may be reviewed at <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/SCLetter08-26.pdf>.

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Key Points

- If you have a project under development that may qualify for an exception, your FI/MAC will review and evaluate the documentation concerning binding agreements/actual expenditures for those projects.
- Your FI/MAC will recommend to the CMS RO whether or not a provider qualifies for an exception, based either on having begun its qualifying period prior to December 29, 2007, or on having requisite binding agreements and evidence of expenditures prior to that date.
- When/if the provider eventually submits its complete application to CMS, the FI/MAC must include the advance determination letter. It will not be necessary for the FI/MAC to conduct a new review of its eligibility for an exception to the moratorium.

Background

This article is based on Change Request (CR) 6172, which discusses Section 114 of the MMSEA (Pub. L. 110-173), enacted December 29, 2007, and establishes a number of provisions affecting LTCHs.

Section 114(d)(1) establishes a three-year moratorium on the designation of new LTCHs or LTCH satellites, and on an increase of beds in a LTCH. The moratorium began on December 29, 2007, and ends on December 28, 2010.

For hospitals that are seeking to be excluded from the Inpatient Prospective Payment System for the first time as a LTCH, under the existing regulations at §412.23(e)(1) and (e)(2)(i), which implement section 1886(d)(1)(B)(iv)(I) of the Social Security Act, such hospitals must:

- Have a provider agreement with Medicare; and
- Have an average Medicare inpatient length of stay (LOS) greater than 25 days. The FI or MAC, as applicable, will verify whether the hospital meets the average LOS requirement.

Sections 114(d)(2) and (d)(3) of MMSEA provide for exceptions to the moratorium imposed by section 114(d)(1) of MMSEA. It is important to note that the two categories of exceptions, (1) Establishment and Classification of a LTCH or LTCH Satellite and (2) Increase in the Number of LTCH Beds, are mutually exclusive.

The three exceptions specified in section 114(d)(2) of MMSEA are only applicable to the establishment and classification of a LTCH or LTCH satellite facility; they do not apply to the moratorium on an increase in beds at section 114(d)(1)(B) of MMSEA.

Similarly, the exception at section 114(d)(3)(A) of MMSEA only applies to the moratorium on increases in beds at existing LTCHs or LTCH satellite facilities, and not to the moratorium on the establishment of LTCHs and LTCH satellite facilities.

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Discussion of Exceptions

1. Establishment and Classification of a LTCH or LTCH Satellite

The moratorium on the *establishment* and classification of a LTCH or LTCH satellite facility does not apply to a LTCH that, as of December 29, 2007, met one of the following three exceptions:

- The LTCH began "its qualifying period for payment as a long-term care hospital under Section 412.23(e) of title 42, Code of Federal Regulations, on or before the date of enactment of this Act Section 114(d)(2)(A)." This exception applies to an existing hospital that began its qualifying period for LTCH status on or before December 29, 2007. To qualify for this exception to the moratorium, the LOS data used to demonstrate that the hospital has met the average LOS requirement at 42 CFR 412.23 must be from its cost reporting period that began on or before December 29, 2007. Note that a LTCH satellite may not qualify for this exception, since there is no "qualifying period" for the establishment of a satellite facility for payment as a LTCH under 42 CFR 412.23(e).
- As of December 29, 2007, the LTCH has a binding written agreement with an outside, unrelated party for the actual construction, renovation, lease, or demolition for a LTCH and has expended, prior to December 29, 2007, at least 10 percent of the estimated cost of the project or, if less, \$2,500,000 (Section 114(d)(2)(B)). This exception applies in the following three circumstances:
 1. As of December 29, 2007, an existing hospital (that is, one that was certified as a hospital as of December 29, 2007) that will become a LTCH has a binding written agreement with an outside unrelated party for the actual construction, renovation, lease, or demolition for converting the hospital to a LTCH and has expended, before that date, at least 10 percent of the estimated cost of the project or \$2,500,000, whichever amount is less;
 2. As of December 29, 2007, an entity that will develop a hospital that will ultimately become a LTCH has a binding written agreement with an outside unrelated party for the actual construction, renovation, lease, or demolition of a hospital and that entity has expended, before that date, at least 10 percent of the estimated cost of the project or \$2,500,000, whichever amount is less; or
 3. An existing LTCH, as of December 29, 2007, has a binding written agreement with an outside unrelated party for the actual construction, renovation, lease or demolition of a new LTCH satellite facility and the LTCH has expended before December 29, 2007, at least 10 percent of the estimated cost of the project or \$2,500,000, whichever amount is less.

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- The LTCH has obtained an approved Certificate of Need (CON) in a State where one is required on or before December 29, 2007, (Section 114(d)(2)(C)). This exception applies to a hospital or entity that was actively engaged in developing a LTCH, as evidenced by the fact that either:
 1. An entity that wanted to create a LTCH, but did not exist as a hospital as of December 29, 2007, had obtained an approved CON for a hospital or LTCH, as applicable, on or before December 29, 2007. Depending on the State's CON law, there may or may not be a CON that is specifically for a long-term acute care hospital, as opposed to one for a general or short-term acute care hospital. If there is a CON that is specifically for a LTCH in the entity's State, then the entity must have been obtained an approved CON that is specifically for creation of a LTCH. If the State does not require a specific LTCH CON, then it is sufficient for the entity to have obtained an approved hospital CON on or before December 29, 2007, as long as it did not exist as a hospital by that date; or
 2. A hospital that did exist as a hospital on December 29, 2007, had obtained an approved CON on or before December 29, 2007, to convert the hospital into a new LTCH, or an existing LTCH had obtained an approved CON by that date to create a satellite. This exception does not apply to an existing hospital that obtained an approved CON for a hospital type other than a LTCH on or before December 29, 2007. The fact that a hospital may have had a CON issued to it years before December 29, 2007, to operate a hospital would not be a reason to grant it an exception, unless that CON was specifically for a LTCH. In a State that does not require a specific CON for a LTCH type of hospital this exception is not available to any existing hospital.

2. Increase in the Number of LTCH Beds

In accordance with Section 114(d)(1)(B), an existing LTCH or LTCH satellite facility may not increase the number of beds in excess of the number of Medicare-certified beds at the hospital as of December 29, 2007. Section 114(d)(3) states that the moratorium on an increase in beds shall not apply if an existing LTCH or LTCH satellite facility is "located in a State where there is only one other long-term care hospital; and requests an increase in beds following the closure or the decrease in the number of beds of another long-term care hospital in the State." There is further statutory language about the intersection of this exception with "grandfathered" LTCH Hospitals within Hospitals (HwHs) as specified at 42 CFR 412.22(f) and LTCH satellite facilities as specified at 42 CFR 412.22(h)(3).

Note: LTCH satellites are not considered separate LTCHs.

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Additional Information

You may see the official instruction (CR 6172) issued to your Medicare FI, or A/B MAC, by going to <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R418OTN.pdf> on the CMS website. If you have questions, please contact your Medicare FI, or A/B MAC, at their toll-free number which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html>.

Document History

- December 22, 2008 – Initial article released.
- January 25, 2018 – The article is revised to update Web addresses. All other information remains the same.

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