

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Transmittal 12251	Date: September 15, 2023
	Change Request 13337

SUBJECT: Revision to 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 CR is to implement section 4143 of the CAA, 2023, consistent with the policy finalized in the FY 2024 IPPS/LTCH PPS final rule (88 FR 59058 August 28, 2023). That policy supersedes the calculations previously specified under CR 13122, in order to adjust certain payments made under CRs 11642, 12596, 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: March 19, 2024

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:12251	Date: September 15, 2023	Change Request: 13337
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SUBJECT: Revision to 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

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IMPLEMENTATION DATE: March 19, 2024

I. GENERAL INFORMATION

A. Background: This CR supersedes the calculations previously specified under CR 13122, in order to adjust certain payments made under CRs 11642, 12596, and CR 12407 for CYs 2010 through 2019. This CR conforms to revised policy issued on August 1, 2023 in the FY 2024 IPPS/LTCH PPS final rule (88 FR 59058 August 28, 2023). The authority for this policy is from Section 4143 of the CAA, 2023 (enacted December 29, 2022), called “Waiver of Cap on Annual Payments for Nursing and Allied Health Education Payments.” This provision 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.

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 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 section 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.

These provisions are effective for portions of cost reporting periods occurring in a CY, beginning with CY 2001, and are codified in the regulations at 42 CFR 413.87.

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

On May 23, 2003, CMS issued CR 2692 (Transmittal A-03-043) instructing MACs how to calculate NAH MA payments consistent with the statute and regulations. MACs continued to calculate NAH MA payments according to the instructions in CR 2692 (that is, under CR 2692, using hospital-specific data in the numerator of the formula, but using the national variables in the denominator) until November 19, 2020, when CMS issued CR 11642. CR 11642 updated the national variables (including the NAH MA payment pool) to be used in the denominator of the calculation and directed MACs to recalculate and correct payments made under CR 2692. Subsequently, CMS issued CR 12407 instructing MACs how to calculate payments for CY 2019, and CR 12596, which corrected the DGME MA percent reduction related to CY 2018 specified in CR 11642.

In general, if a hospital's cost report was initially finalized under CR 2692, and then reprocessed under CR 11642 (or CR 12596 or CR 12407), then the hospital would have experienced a recoupment of NAH MA overpayments for the affected cost reporting period. If a hospital's cost report was initially settled under CR 11642 (or CR 12596 or CR 12407), then it would have received an NAH MA payment amount lower than what the payment would have been if it had been calculated using CR 2692, but no recoupment would have occurred.

The purpose of this CR is to implement section 4143 of the CAA, 2023, consistent with the policy finalized in the FY 2024 IPPS/LTCH PPS final rule (88 FR 59058 August 28, 2023). That policy supersedes the calculations previously specified under CR 13122, in order to adjust certain payments made under CRs 11642, 12596, and CR 12407 for CYs 2010 through 2019. For general background on 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.

Subsequently, CR 13122 issued on March 16, 2023, instructed MACs to recalculate NAH MA payments without application of the \$60 million limit, as directed by section 4143. This CR supersedes the method discussed in CR 13122 for the MACs to implement section 4143 such that the amounts previously recouped under CR 11642 (or CR 12596 or CR 12407 as applicable) will be returned to hospitals, and recoupments that would have occurred under CR 11642 (or CR 12596 or CR 12407 as applicable) if not for the enactment of section 4143 will not occur. As part of this methodology, cost reports initially settled under CR 11642 (or CR 12596 or CR 12407) will be treated *as though* they had originally been paid according to CR 2692 and were then subject to recoupment under the later applicable CR. By returning the amounts previously recouped (or that would have been recouped), and preventing any additional recoupments from occurring, NAH MA payments will be consistent with the amounts calculated with the variables in place prior to the release of CR 11642 (i.e., according to the instructions in CR 2692).

In addition, section 541 of the BBRA 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 13122, 11642, 12596, and 12407. This CR provides the same table attachment from CR 13122 with recalculated pool amounts for CYs 2010 through 2019, but also provides additional instructions.

First, MACs shall determine whether a hospital received initial or revised NAH MA payments under CR 11642 (or CR 12596 or CR 12407 as applicable); if not (e.g., because the cost reports have not yet been settled), then MACs shall proceed according to the instructions in the section below titled **Other Scenarios**. For hospitals that received initial or revised payments under CR 11642 (or CR 12596 or CR 12407 as applicable), the MAC shall determine whether such hospitals 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.

Note about receipt of interim payments as of December 29, 2022 – There may be a few reasons why a hospital may not have been receiving NAH MA payments on an interim basis as of December 29, 2022, even though the hospital had not formally closed its NAH program(s). For example, the hospital's NAH pass-through amount may be too small to qualify for interim payments. If the hospital's NAH pass-through would otherwise qualify for interim payments as of December 29, 2022, if the amount had been large enough, then for the purpose of implementing section 4143, MACs shall treat the hospital as though it was receiving interim payments as of December 29, 2022. However, in many cases the MACs have found that hospitals are not "operating" the NAH program(s) consistent with the regulations at 42 CFR 413.85, and have therefore disallowed the NAH payment, although hospitals may believe that "as of the date of enactment" of section 4143, the hospitals "are operating" a school or nursing and/or allied health. Where the MACs have disallowed the NAH payment, settled the cost report(s), and the hospitals are appealing the disallowance, then MACs shall follow the normal appeals process, and NAH payments, under section 4143 or otherwise, are held in abeyance pending the outcome of the appeals. If the hospitals should be successful in their appeals to restore NAH pass-through payment, then for the purpose of implementing section 4143, MACs shall treat the hospitals as though they were receiving interim payments as of December 29, 2022. If a hospital was not receiving interim payments because it has multiple cost reporting years that have not yet been settled, and as a result, CRs 11642, 12596, or 12407 were not yet applied to those cost reports, there would be no need for reversal of a recoupment upon eventual settlement of those cost reports. Thus, MACs shall not apply CR 11642 (or CR 12596 or CR 12407 as applicable) to those cost reports upon settlement, and would pay the NAH MA payment to the hospital in accordance with CR 2692, so long as the MAC finds that the hospital is "operating" the NAH program(s) consistent with the regulations at 42 CFR 413.85.

Second, MACs shall recalculate an eligible hospital's NAH MA payment for portions of cost reporting periods occurring in CYs 2010 through CY 2019 using the table below that includes recalculated pool amounts. MACs shall do this for portions of cost reporting periods occurring in CYs 2010 through 2019 that are still open or within the 3-year reopening period in accordance with the previously issued Technical Direction Letter.

Note About Reopening Status of Applicable Cost Reports – When implementing this CR, MACs shall refer to the previously issued Technical Direction Letter regarding the 3-year reopening periods for affected cost reports. If a cost report was already settled under CR 13122, the cost report should be reopened in accordance with the Technical Direction Letter, and the MAC should refer to the instructions in the section below titled **Other Scenarios** for instructions on how to proceed.

The formula is:

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

Third, MACs shall take the recalculated NAH MA amount in the second step above, and subtract the NAH MA payment amount determined under CR 11642 (or CR 12596 or CR 12407 as applicable) for a CY.

Fourth, MACs shall determine the NAH recoupment amount as the amount previously recouped under CR 11642 (or CR 12596 or CR 12407 as applicable), or, for cost reports that were initially settled under one of those three CRs, the amount that *would have been* recouped if the cost report had originally been paid according to CR 2692. The MAC shall then determine the total amount owed to a hospital in a CY as the amount calculated in the third step plus the absolute value difference between that amount and the amount previously recouped (or that would have been recouped) under CR 11642 (or CR 12596 or CR 12407 as applicable). That is, step 4 equals step 3 + (NAH recoupment amount – step 3). We note that by adding this difference to the amount calculated in the third step, the amounts previously recouped (or that would have been recouped) under CR 11642 (or CR 12596 or CR 12407 as applicable) will be returned to hospitals.

MACs shall refer to their workpapers used to implement CR 11642 (or CR 12596 or CR 12407 as applicable) to identify the amounts recouped. For cost reports initially settled under CR 11642 (or CR 12596 or CR 12407), MACs shall calculate what a hospital's NAH MA payment would have been under CR 2692, and use that information to determine the amount that would have been recouped under the later applicable CR. The result of this fourth step is that for a respective cost reporting period occurring in a CY, a hospital's payment on Worksheet E, Part A line 53 of CMS Form-2552-10 is what the hospital received or would have received under the CR in effect prior to CR 11642 (that is, CR 2692, Transmittal A-03-043, issued May 23, 2003). (Note that if the relevant cost report is on CMS Form-2552-96, the appropriate line is Worksheet E, Part A, line 11.01). MACs shall not make any adjustments to or recalculations of the MA DGME payments.

For example, suppose Hospital A has a FYE 12/31/2017 cost report. Using Hospital A's specific data for FYE 12/31/2017 for the numerator amounts, and the pool and national data for the denominator amounts from CR 2692, Hospital A's amount on line 53 of Worksheet E, Part A was \$1,523,231. (This amount would be the same whether Hospital A's cost report was initially settled under CR 2692, or initially settled under CRs 11642, 12596 or 12407.) Assume that upon implementation of CR 11642, the amount on line 53 was \$416,362; if Hospital A's cost report was originally paid according to CR 2692, this would equate to a recoupment of \$1,106,869. Under the second step of this CR with a revised pool amount greater than \$60 million, Hospital A's revised payment is \$826,933. Under the third step of this CR, take the difference between the revised payment calculated under step 2 and the payment amount determined under CR 11642. That is, step 3 equals \$410,571 (\$826,933 - \$416,362).

Under the fourth step of this CR, the amount owed to Hospital A is $\$410,571 + (\$1,106,869 - \$410,571) = \$1,106,869$. The MAC shall pay Hospital A \$1,106,869 for FYE 12/31/2017, and report \$1,523,231 on Worksheet E, Part A, line 53 for FYE 12/31/2017 (\$1,523,231 is the sum of \$1,106,869 and \$416,362, and is what was originally reported on Worksheet E, Part A, line 53 prior to implementation of CR 11642; see beginning of this example). **See Attachment 2 called “Implementation Example.”**

MACs shall redo work done since issuance of CR 13122 on March 16, 2023, to include the fourth step specified in this reissued CR. If a cost report was already settled under CR 13122, refer to the instructions in the section below titled **Other Scenarios**.

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

See Attachment 1 to this CR, called “CALCULATION TABLE FOR SECTION 4143 OF CAA OF 2023 FOR PORTIONS OF COST REPORTS IN CYs 2010 THROUGH 2019” for use when a hospital received initial or revised payments under CR 11642 (or CR 12596 or CR 12407 as applicable). Do not use Attachment 1 under the Other Scenarios section below.

MACs shall only implement this CR to a hospital that, as of the date of enactment of CAA 2023 (December 29, 2022) 1) was receiving MA NAH and Part A NAH pass-through payments on an interim basis, 2) would otherwise qualify interim payments as of December 29, 2022, if the interim amount had been large enough, 3) successfully appeals the disallowance of its NAH pass-through payment and the hospital’s appeal is successful, or 4) the MAC otherwise finds that as of the time of implementing this CR, the hospital is operating a NAH program(s) consistent with the regulations at 42 CFR 413.85.

(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).

Other Scenarios (for Portions of Cost Reporting Periods During CYs 2010 Through 2019)

1. A hospital’s cost report on Worksheet E, Part A, Line 53 still reflects the payment made under CR 2692: In this case, leave the payment amount made under CR 2692, and do not make further adjustments.
2. A hospital’s cost report was reopened under CR 11642, CR 12596 or CR 12407, but is not yet settled, so no recoupment was effectuated: In this case, leave the payment amount made under CR 2692, and do not make further adjustments.
3. A hospital’s cost report reflects \$0 or blank on Worksheet E, Part A, Line 53 (or predecessor line on Form 2552-96): In this case, the MAC shall determine if the hospital is eligible for NAH pass-through payment under 42 CFR 413.85, as of the time of implementing this CR. If yes, then calculate the NAH MA payment in accordance with CR 2692. If no, leave that line \$0 or blank.
4. A hospital’s cost report was settled under CR 13122 (incorporating an increased pool amount): In this case, the MAC shall reopen that cost report, and the MAC shall ensure that the amount reported for an eligible provider on worksheet E, Part A line 53 is the amount computed, or that would have been computed, in accordance with CR 2692.

Settled Cost Reports: If cost reports have already been settled (Notice of Program Reimbursement (NPR)), MACs shall have already issued reopening notices for NPR’d cost reports in accordance with the previously issued Technical Direction Letter. MACs shall identify payments owed on those cost reports, and issue

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		
13337.3.2	For hospitals that did not receive initial or revised NAH MA payments under CRs 11642, 12596 or 12407, MACs shall proceed according to the instructions in the section of the CR titled Other Scenarios to determine the correct amount owed to the hospital. MACs shall not use Attachment 1, or perform the calculations under steps 2 through 4, for cost reports to which the Other Scenarios section is applicable.	X									
13337.3.3	MACs shall determine that ultimately, the amount reported for an eligible provider on CMS Form 2552-10 Worksheet E, Part A line 53 (or predecessor line on Form 2552-96) is the amount computed, or that would have been computed, in accordance with CR 2692, and that in all circumstances, the maximum payment reported for an eligible provider is the amount computed, or that would have been computed, in accordance with CR 2692.	X									
13337.4	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									
13337.5	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 M A C	C E D I	
		A	B	H H H			
13337.6	CR as Provider Education: Contractors shall post this entire instruction, or a	X					

Number	Requirement	Responsibility				
		A/B MAC			D	C
		A	B	H H H	M A C	E D I
	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.					

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

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: 2

ATTACHMENT A FOR SECTION 4143 OF CAA OF 2023						
	Section 4143 CAA POOL	FFS N&AH PAYMENTS	FFS INPATIENT DAYS	MA INPATIENT DAYS	(FFS N&AH/FFS INPT DAYS) X MA INPT DAYS	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%

ATTACHMENT 2: IMPLEMENTATION EXAMPLE

Hospital A has a FYE 12/31/2017 cost report:

Worksheet E, Part A line 53 under CR 2692 prior to implementation of CR 11642	\$1,523,231 (a)
Worksheet E, Part A line 53 after implementation of CR 11642	\$416,362 (b)
Recoupment after implementation of CR 11642	\$1,106,869 [(c) = a - b]
This CR Step 2 (amount with recalculated pool)	\$826,933 (d)
This CR Step 3 (Step 2 - Worksheet E, Part A line 53 after implementation of CR 11642)	\$410,571 [(e) = d - b]
This CR Step 4 (Step 3 + (Recoupment after implementation of CR 11642 - Step 3))	\$1,106,869 [(f) = (e + (c - e))]
Check: f = c	\$1,106,869 (f) = \$1,106,869 (c)
Check: new amount on line 53 = original amount on line 53 (f) + (b) = (a)	\$1,106,869 (f) + \$416,362 (b) = \$1,523,231 (a)