

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Transmittal 1450	January 9, 2015
	Change Request 9025

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

I. SUMMARY OF CHANGES: This Change Request provides details on how to apply the exceptions to the moratorium on the establishment of new LTCH and LTCH satellites under Section 1206 of the Pathways to SGR Reform Act (Pub. L.113-67).

EFFECTIVE DATE: April 1, 2014

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

IMPLEMENTATION DATE: February 10, 2015

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 obliged 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

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I. GENERAL INFORMATION

A. Background: Section 1206 of the Pathways to SGR Reform Act (Pub. L. 113-67), enacted December 26, 2013, later amended by section 112(b) of the Protecting Access to Medicare Act of 2014 (Pub. L. 113-93), enacted April 1, 2014 establishes a moratorium on the designation of new LTCHs or LTCH satellites, and on an increase of beds in an LTCH. The moratorium began on April 1, 2014, and ends on September 30, 2017.

The statute also provides for certain exceptions to the moratorium on new LTCHs and additional LTCH satellite facilities. A prior moratorium was in effect from December 29, 2007 through December 28, 2012. The primary difference between the “expired” moratoria and the “new” moratorium is that, while the “expired moratoria” provided for specific exceptions to both the moratorium on the establishment of new LTCHs and LTCH satellite facilities and on increases in the number of beds in existing LTCHs and LTCH satellite facilities, the “new” moratorium only provides exceptions to the moratorium on the establishment of new LTCHs and LTCH satellite facilities. However, no exceptions are provided for increases in the number of certified beds in existing LTCHs and LTCH satellites. (For a detailed description of the “expired” moratoria provisions (including the applicable exceptions) that were in effect from December 29, 2007 through December 28, 2012, see the May 22, 2008 Interim Final Rule with Comment Period (73 FR 29705 through 29708) as well as S&C-8-26, June 13, 2008; S&C-9-32, April 17, 2009; S&C 10-25, July 27, 2010; and S&C 13-08, January 25, 2013).

B. Policy: 1206 of the Pathways to SGR Reform Act (Pub. L. 113-67)

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 must have an average Medicare inpatient length of stay (LOS) greater than 25 days. The MAC (Medicare Administrative Contractor) will verify whether the hospital meets the average LOS requirement.

Section 1206(b)(2) of the Pathways to SGR Reform Act provides for limited exceptions to the moratorium on the establishment of new LTCH or LTCH Satellites. As is generally noted in the preamble to our FY 2015 final rule, these are separate exceptions (one of which has two potential prongs) which were established by the statute, but it has come to our attention that the regulatory text (using periods) does not make this clear. Therefore, in this CR, we are clarifying that a new LTCH or LTCH Satellite only needs to meet one of the three exceptions described below (one of which has two prongs). There is no exception to the moratorium on the increase of the number of beds in existing LTCH or LTCH Satellites.

1. Establishment and Classification of a LTCH or LTCH Satellite

To qualify for an exception under the moratorium to establish a new LTCH or LTCH satellite facility between April 1, 2014, and September 30, 2017, a hospital must meet one of the following three exceptions:

I: For a new LTCH, an existing hospital (that is, one that was certified for Medicare participation as a hospital prior to April 1, 2014) must have begun “its qualifying period for payment as a long-term care hospital under 42 CFR 412.23(e) . . . prior to the date of enactment of this Act” (Section 112(b) of Pub. L. 113-93). This exception applies to a hospital that already participates in Medicare and which began its qualifying period for LTCH status prior to April 1, 2014. 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 the hospital’s cost reporting period that began prior to April 1, 2014. Note that an LTCH satellite may not qualify for this exception, since there is no “qualifying period” for the establishment of a satellite facility for payment as an LTCH under §412.23(e).

or

II: Prior to April 1, 2014 the LTCH has a binding written agreement with an outside, unrelated party for the actual construction, renovation, lease, or demolition for an LTCH or LTCH satellite, as applicable, and has expended, prior to April 1, 2014, at least 10 percent of the estimated cost of the project or, \$2,500,000, whichever amount is less. (Section 114(d)(2)(B) of Pub. L. 113-93) This exception applies in any one of the following three circumstances:

1. Prior to April 1, 2014, an existing hospital (that is, one that was certified for Medicare participation as a hospital prior to April 1, 2014) seeking to become an LTCH has a binding written agreement with an outside, unrelated party for the actual construction, renovation, lease, or demolition for converting the hospital to an 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; or
2. Prior to April 1, 2014, an entity that is developing a hospital that will ultimately seek to become an 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, prior to April 1, 2014, 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 prior to April 1, 2014 at least 10 percent of the estimated cost of the project or \$2,500,000, whichever amount is less.

or

III: An entity has obtained prior to April 1, 2014 an approved certificate of need (CON) in a State where one is required. This exception applies to a hospital or entity that was actively engaged in developing an LTCH, as evidenced by the fact that *either*:

1. An entity that is seeking to create an LTCH, but which was not an existing hospital (that is, one that was certified for Medicare participation as a hospital prior to April 1, 2014), had obtained an approved CON for a hospital or LTCH, as applicable, prior to April 1, 2014. 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 the State’s CON law provides for a CON that is specifically for an LTCH, then the entity must have obtained an approved CON that is specifically for creation of an LTCH. If the State’s CON law does not provide for a specific LTCH CON, then it is sufficient for the entity to have obtained an approved hospital CON prior to April 1, 2014, so long as it was not on that date an existing hospital (that is, one that was certified for Medicare participation as a hospital prior to April 1, 2014); or
2. An existing hospital (that is, one that was certified for Medicare participation as a hospital prior to April 1, 2014) had obtained an approved CON prior to April 1, 2014 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

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	
	recommendation should include pertinent facts about the provider, including the provider's date of participation in the Medicare program. Recommendations based on a provider having requisite binding agreements and evidence of expenditures prior to that date should include a description of the materials reviewed by the MAC which led to the particular recommendation.									
9025.3	When/if the provider eventually submits its complete application to CMS, MAC shall include the advance determination letter. It will not be necessary for the MAC to conduct a new review of its eligibility for an exception to the moratorium.	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		
9025.4	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 1 week of the release of this instruction. 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): Emily Lipkin, 410-786-3633 or emily.lipkin@cms.hhs.gov , Daniel Schroder, 410-786-7452 or daniel.schroder@cms.hhs.gov

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

VI. FUNDING

Section A: For Medicare Administrative Contractors (MACs):

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ATTACHMENTS: 0