



Center for Clinical Standards and Quality/Survey & Certification Group

Ref: S&C: 14-26- Hospitals

DATE: May 9, 2014

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Long-term Care Hospital (LTCH) Moratorium – Preliminary Instructions

Memorandum Summary

- ***New LTCH Moratorium:*** A new statutory moratorium prohibits, with certain exceptions outlined in a proposed rule, the establishment of new LTCHs or new LTCH satellites of existing LTCHs. Additionally, the moratorium prohibits, with no exceptions, an increase in the number of an LTCH's certified beds. The moratorium is effective April 1, 2014 to September 30, 2017.
- ***Determinations for Exceptions Must Await Further Guidance:*** Centers for Medicare & Medicaid Services (CMS) Regional Office (RO) staff must defer making determinations on whether a proposed new LTCH or LTCH satellite meets any exceptions to the moratorium until the implementation of those exceptions has been finalized through rulemaking and additional instructions are provided.

Background

Section 1206(b) of the Pathway for SGR Reform Act of 2013 (Pub. L. 113-67) was enacted December 26, 2013, and was later amended by section 112(b) of the Protecting Access to Medicare Act of 2014 (Pub. L. 113-93, enacted April 1, 2014). The legislation includes a statutory moratorium on the establishment of new Medicare-participating LTCHs and LTCH satellite facilities, and on the increase in the number of certified beds in existing LTCHs and LTCH satellite facilities. The moratorium is in effect for the period beginning April 1, 2014 and ending September 30, 2017. The statute also provides for certain exceptions to the moratorium on new LTCHs and LTCH satellite facilities. No exceptions are provided for increases in the number of certified beds in existing LTCHs and LTCH satellites.

LTCHs Not Impacted by the Moratorium

- A hospital that met the regulatory criteria for approval as an LTCH before April 1, 2014, as evidenced by the RO having received a written recommendation from the applicable Medicare Administrative Contractor (MAC) dated prior to April 1, 2014 (in which the

MAC states that the hospital meets the LTCH length of stay criteria) is not affected by the new moratorium. This is the case even if the RO did not process the hospital's conversion to LTCH status and issue a Provider Tie-in Notice (Form CMS-2007) to the MAC, to enable the MAC to treat the facility as an LTCH for Medicare payment purposes, until after April 1, 2014.

- An LTCH satellite that was fully operational, and for which the CMS RO issued a Provider Tie-in Notice to the MAC prior to April 1, 2014, is not affected.
- An increase in an LTCH's certified beds, where the CMS RO had approved and issued a Provider Tie-in Notice to the MAC prior to April 1, 2014, is not affected.

Proposed Exceptions to the Moratorium

Proposed regulations to implement the moratorium, including the following proposed exceptions, are included in the Notice of Proposed Rulemaking for the 2015 Inpatient Prospective Payment System and LTCH Prospective Payment System, which is available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2014--10067.pdf>. To qualify for a proposed exception under the moratorium to establish a new LTCH or LTCH satellite facility between April 1, 2014, and September 30, 2017, a hospital would have to meet one of the following criteria:

- The hospital must have begun its qualifying period for payment as an LTCH under 42 CFR 412.23(e).
- The hospital has a binding written agreement with an outside, unrelated party for the actual construction, renovation, lease, or demolition for an LTCH, and has expended before April 1, 2014, at least 10 percent of the estimated cost of the project or, if less, \$2,500,000.
- The hospital has obtained an approved certificate of need in a State where one is required.

Final rulemaking and associated guidance are required in order to make determinations regarding an applicant's eligibility for any exception to the moratorium. Once the rule is finalized, determinations will be handled on a case-by-case basis by the applicant's MAC and the CMS RO survey and certification staff.

CMS RO survey and certification staff may not make a determination as to whether a prospective new LTCH or new LTCH satellite may be approved based on one of the proposed exceptions until after the final regulations are released and further guidance is issued. Applications for exceptions which the RO receives are to be held without processing until further notice.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers and the State/Regional Office training coordinators within 30 days of this memorandum.

/s/

Thomas E. Hamilton

cc: Survey and Certification Regional Office Management