



The Impact of Bipartisan Budget Act of 2013 on LTACHs

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At the end of 2013, the Bipartisan Budget Act of 2013 (the Budget Act) was passed by both the U.S. House of Representatives and the Senate, and then signed by President Obama on December 26, 2013. The Budget Act did more than just set the nation's spending budget for the current fiscal year and provide additional sequester relief. It directly affected long-term acute care hospitals (LTACHs) by scheduling the reinstatement of a moratorium on the establishment of LTACHs (January 1, 2015 to September 30, 2017) and by introducing changes to the way Medicare pays for LTACH services

What is an LTACH?

LTACHs furnish extended medical and rehabilitative care to individuals with clinically complex problems, such as multiple acute or chronic conditions, that need hospital-level care for relatively extended periods. In general, LTACH patients are too ill for placement in skilled nursing facilities. To qualify as an LTACH for Medicare payment, a facility must meet Medicare's conditions of participation for acute care hospitals and have an average inpatient length of stay greater than 25 days. See 42 C.F.R. § 412.23(e).

LTACH Moratoriums

Approximately six years ago, the Medicare, Medicaid and SCHIP Extension Act of 2007, Section 114(d), initially provided a moratorium to prevent the establishment of new LTACHs, increasing existing LTACHs' number of certified beds, or the establishment of a satellite by an existing LTACH. The moratorium commenced on December 29, 2007 and ran until December 29, 2010; however, it was subsequently extended for an additional two years until December 29, 2012 by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (the Affordable Care Act).

The five-year ban on establishing LTACHs expired on December 29, 2012, but the Centers for Medicare & Medicaid Services ("CMS") still maintained authority to prevent the enrollment of new LTACHs as Medicare providers. Specifically, under Section 3106 of the Affordable Care Act, CMS has the power to impose an administrative moratorium on the enrollment of new providers of services and suppliers if it determines such moratorium is necessary to prevent or combat fraud, waste, or abuse. Factors in determining whether to impose such a moratorium on enrollment include whether a state Medicaid program has declared a moratorium on a particular provider type and whether a rapid increase in enrollment within a given provider category has occurred or is likely to occur. In summary, an organization could establish an LTACH but CMS has default authority to the prevent enrollment in Medicare.

With the recent passage of the Budget Act, a moratorium on the establishment of LTACHs will return for a 21-month time period – January 1, 2015 to September 30, 2017. Therefore, an entity seeking to establish and enroll as an LTACH in Medicare this year must act quickly and prudently. It must conduct its diligence on the need for LTACH services in a particular geographic area and should also contact CMS as quickly possible in submitting provider enrollment applications to avoid any potential CMS administrative moratorium and before the reinstated moratorium takes effect on January 1, 2015.

Medicare Payments for LTACH Services

In addition to reinstating the moratorium, the Budget Act established several new rules regarding the reimbursement rates for LTACH services, including the following:

- Payments for Medicare patients discharged from LTACHs will continue to be made at the LTACH Prospective Payment System (PPS) rate as long as the patient was either: (1) a Critical Care patient (*patient that had a short-term acute care stay that included 3 or more days in an intensive care unit*) OR (2) a Ventilator patient (*patient spent 96 hours on a ventilator in an LTACH and had a short-term acute care stay immediately prior to coming to the LTACH*).
- Starting October 1, 2015 (FY 2016), all patients discharged from an LTACH that do not qualify for the LTACH PPS rate will be paid at the site-neutral payment rate. The site-neutral payment rate for FY 2016 will be the lower of: (a) the Inpatient Prospective Payment System (IPPS) comparable per diem payment rate (plus outlier payments currently used to calculate certain short-stay outlier payments) OR (b) 100% of the estimated cost of services.¹
- Also starting October 1, 2015 (FY 2016), when making calculations to determine whether the average length of stay of an LTACH exceeds 25 days, LTACHs must exclude two categories of patient stays in their calculations: (1) discharges reimbursed under the site-neutral payment rate and (2) discharges paid by a Medicare Advantage plan.

¹ For FY 2016 and FY 2017, a blended site-neutral payment rate will apply. More specifically, the site-neutral discharges will be reimbursed at half IPPS-comparable rate and half LTACH PPS rate for cost reporting periods beginning October 1, 2015 through September 30, 2017. Starting October 1, 2017 (FY 2018) site-neutral discharges will be paid at IPPS-comparable rates.

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