

114TH CONGRESS
2D SESSION

H. R. 5713

To provide for the extension of certain long-term care hospital Medicare payment rules, clarify the application of rules on the calculation of hospital length of stay to certain moratorium-excepted long-term care hospitals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2016

Mr. TIBERI (for himself and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the extension of certain long-term care hospital Medicare payment rules, clarify the application of rules on the calculation of hospital length of stay to certain moratorium-excepted long-term care hospitals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Sustaining Healthcare Integrity and Fair Treatment Act
6 of 2016”.

1 (b) TABLE OF CONTENTS.—This table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE PART A PROVISIONS

Sec. 101. Extension of certain LTCH Medicare payment rules.

Sec. 102. Application of rules on the calculation of hospital length of stay to all LTCHs.

Sec. 103. Change in Medicare classification for certain hospitals.

Sec. 104. Temporary exception to the application of the Medicare LTCH site neutral provisions for certain spinal cord specialty hospitals.

Sec. 105. Temporary exception to site neutral payment rate for certain discharges from long-term care hospitals that involve severe wounds.

TITLE II—OTHER PROVISIONS

Sec. 201. No payment for items and services furnished by newly enrolled providers or suppliers within a temporary moratorium area.

3 **TITLE I—MEDICARE PART A** 4 **PROVISIONS**

5 **SEC. 101. EXTENSION OF CERTAIN LTCH MEDICARE PAY-** 6 **MENT RULES.**

7 (a) 25-PERCENT PATIENT THRESHOLD PAYMENT
 8 ADJUSTMENT.—Section 114(c)(1)(A) of the Medicare,
 9 Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C.
 10 1395ww note), as amended by section 4302(a) of division
 11 B of the American Recovery and Reinvestment Act (Public
 12 Law 111–5), sections 3106(a) and 10312(a) of Public
 13 Law 111–148 and section 1206(b)(1)(B) of the Pathway
 14 for SGR Reform Act of 2013 (division B of Public Law
 15 113–67), is amended by striking “for a 9-year period” and
 16 inserting “through June 30, 2016, and for discharges oc-

1 ccurring on or after October 1, 2016, and before July 1,
2 2017,”.

3 (b) PAYMENT FOR HOSPITALS-WITHIN-HOS-
4 PITALS.—Section 114(c)(2) of the Medicare, Medicaid,
5 and SCHIP Extension Act of 2007 (42 U.S.C. 1395ww
6 note), as amended by section 4302(a) of division B of the
7 American Recovery and Reinvestment Act (Public Law
8 111–5), sections 3106(a) and 10312(a) of Public Law
9 111–148, and section 1206(b)(1)(A) of the Pathway for
10 SGR Reform Act of 2013 (division B of Public Law 113–
11 67), is amended—

12 (1) in subparagraph (A), by inserting “or any
13 similar provision,” after “Regulations,”;

14 (2) in subparagraph (B)—

15 (A) in clause (i), by inserting “or any simi-
16 lar provision,” after “Regulations,”; and

17 (B) in clause (ii), by inserting “, or any
18 similar provision,” after “Regulations”; and

19 (3) in subparagraph (C), by striking “for a 9-
20 year period” and inserting “through June 30, 2016,
21 and for discharges occurring on or after October 1,
22 2016, and before July 1, 2017”.

1 **SEC. 102. APPLICATION OF RULES ON THE CALCULATION**
2 **OF HOSPITAL LENGTH OF STAY TO ALL**
3 **LTCHS.**

4 (a) IN GENERAL.—Section 1206(a)(3) of the Path-
5 way for SGR Reform Act of 2013 (division B of Public
6 Law 113–67; 42 U.S.C. 1395ww note) is amended—

7 (1) by striking subparagraph (B);

8 (2) by striking “SITE NEUTRAL BASIS.—” and
9 all that follows through “For discharges occurring”
10 and inserting “SITE NEUTRAL BASIS.—For dis-
11 charges occurring”;

12 (3) by striking “subject to subparagraph (B),”;
13 and

14 (4) by redesignating clauses (i) and (ii) as sub-
15 paragraphs (A) and (B), respectively, and moving
16 each of such subparagraphs (as so redesignated) 2
17 ems to the left.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall be effective as if included in the enact-
20 ment of section 1206(a)(3) of the Pathway for SGR Re-
21 form Act of 2013 (division B of Public Law 113–67; 42
22 U.S.C. 1395ww note).

1 **SEC. 103. CHANGE IN MEDICARE CLASSIFICATION FOR**
2 **CERTAIN HOSPITALS.**

3 (a) IN GENERAL.—Subsection (d)(1)(B) of section
4 1886 of the Social Security Act (42 U.S.C. 1395ww) is
5 amended—

6 (1) in clause (iv)—

7 (A) in subclause (I), by striking “or” at
8 the end;

9 (B) in subclause (II)—

10 (i) by striking “, or” at the end and
11 inserting a semicolon; and

12 (ii) by redesignating such subclause as
13 clause (vi) and by moving it to immediately
14 follow clause (v); and

15 (iii) in clause (v), by striking the
16 semicolon at the end and inserting “, or”;
17 and

18 (C) by striking “(IV)(I) a hospital” and in-
19 serting “(IV) a hospital”.

20 (b) CONFORMING PAYMENT REFERENCES.—The sec-
21 ond sentence of subsection (d)(1)(B) of such section is
22 amended—

23 (1) by inserting “(as in effect as of such date)”
24 after “clause (iv)”;

25 (2) by inserting “(or, in the case of a hospital
26 described in clause (iv)(II), as so in effect, shall be

1 classified under clause (vi) on and after the effective
2 date of such clause (vi) and for cost-reporting peri-
3 ods beginning on or after January 1, 2015, shall not
4 be subject to subsection (m) as of the date of such
5 classification)” after “so classified”.

6 (c) APPLICATION.—

7 (1) IN GENERAL.—For cost-reporting periods
8 beginning on or after January 1, 2015, in the case
9 of an applicable hospital (as defined in paragraph
10 (3)), the following shall apply:

11 (A) Payment for inpatient operating costs
12 shall be made on a reasonable cost basis in the
13 manner provided in section 412.526(c)(3) of
14 title 42, Code of Federal Regulations (as in ef-
15 fect on January 1, 2015) and in any subse-
16 quent modifications.

17 (B) Payment for capital costs shall be
18 made in the manner provided by section
19 412.526(c)(4) of title 42, Code of Federal Reg-
20 ulations (as in effect on such date).

21 (C) Claims for payment for Medicare bene-
22 ficiaries who are discharged on or after January
23 1, 2017, shall be processed as claims which are
24 paid on a reasonable cost basis as described in

1 section 412.526(c) of title 42, Code of Federal
2 Regulations (as in effect on such date).

3 (2) APPLICABLE HOSPITAL DEFINED.—In this
4 subsection, the term “applicable hospital” means a
5 hospital that is classified under clause (iv)(II) of sec-
6 tion 1886(d)(1)(B) of the Social Security Act (42
7 U.S.C. 1395ww(d)(1)(B)) on the day before the date
8 of the enactment of this Act and which is classified
9 under clause (vi) of such section, as redesignated
10 and moved by subsection (a), on or after such date
11 of enactment.

12 (d) CONFORMING TECHNICAL AMENDMENT.—
13 Clauses (i) and (ii) of section 1886(m)(5)(F) and section
14 1899B(a)(2)(A)(iv) of the Social Security Act (42 U.S.C.
15 1395ww(m)(5)(F) and 42 U.S.C. 1395lll(a)(2)(A)(iv)) are
16 each amended by striking “1886(d)(1)(B)(iv)(II)” and in-
17 serting “1886(d)(1)(B)(vi)”.

18 **SEC. 104. TEMPORARY EXCEPTION TO THE APPLICATION**
19 **OF THE MEDICARE LTCH SITE NEUTRAL PRO-**
20 **VISIONS FOR CERTAIN SPINAL CORD SPE-**
21 **CIALTY HOSPITALS.**

22 (a) EXCEPTION.—Section 1886(m)(6) of the Social
23 Security Act (42 U.S.C. 1395ww(m)(6)) is amended—

24 (1) in subparagraph (A)(i), by striking “and
25 (E)” and inserting “, (E), and (F)”; and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(F) TEMPORARY EXCEPTION FOR CER-
4 TAIN SPINAL CORD SPECIALTY HOSPITALS.—
5 For discharges in cost-reporting periods begin-
6 ning during fiscal year 2018, subparagraph
7 (A)(i) shall not apply (and payment shall be
8 made to a long-term care hospital without re-
9 gard to this paragraph) if such discharge is
10 from a long-term care hospital that meets each
11 of the following requirements:

12 “(i) NOT-FOR-PROFIT.—The long-
13 term care hospital was a not-for-profit
14 long-term care hospital on June 1, 2014,
15 as determined by cost report data.

16 “(ii) PRIMARILY PROVIDING TREAT-
17 MENT FOR CATASTROPHIC SPINAL CORD
18 OR ACQUIRED BRAIN INJURIES OR OTHER
19 PARALYZING NEUROMUSCULAR CONDI-
20 TIONS.—Of the discharges in calendar year
21 2013 from the long-term care hospital for
22 which payment was made under this sec-
23 tion, at least 50 percent were classified
24 under MS–LTCH–DRGs 28, 29, 52, 57,
25 551, 573, and 963.

1 “(iii) SIGNIFICANT OUT-OF-STATE AD-
2 MISSIONS.—

3 “(I) IN GENERAL.—The long-
4 term care hospital discharged inpa-
5 tients (including both individuals enti-
6 tled to, or enrolled for, benefits under
7 this title and individuals not so enti-
8 tled or enrolled) during fiscal year
9 2014 who had been admitted from at
10 least 20 of the 50 States, determined
11 by the States of residency of such in-
12 patients and based on such data sub-
13 mitted by the hospital to the Sec-
14 retary as the Secretary may require.

15 “(II) IMPLEMENTATION.—Not-
16 withstanding any other provision of
17 law, the Secretary may implement
18 subclause (I) by program instruction
19 or otherwise.

20 “(III) NON-APPLICATION OF PA-
21 PERWORK REDUCTION ACT.—Chapter
22 35 of title 44, United States Code,
23 shall not apply to data collected under
24 this clause.”.

1 (b) STUDY AND REPORT ON THE STATUS AND VIA-
2 BILITY OF CERTAIN SPINAL CORD SPECIALTY LONG-
3 TERM CARE HOSPITALS.—

4 (1) STUDY.—The Comptroller General of the
5 United States shall conduct a study on long-term
6 care hospitals described in section 1886(m)(6)(F) of
7 the Social Security Act, as added by subsection (a).
8 Such report shall include an analysis of the fol-
9 lowing:

10 (A) The impact on such hospitals of the
11 classification and facility licensure by State
12 agencies of such hospitals.

13 (B) The Medicare payment rates for such
14 hospitals.

15 (C) Data on the number and health care
16 needs of Medicare beneficiaries who have been
17 diagnosed with catastrophic spinal cord or ac-
18 quired brain injuries or other paralyzing neuro-
19 muscular conditions (as described within the
20 discharge classifications specified in clause (ii)
21 of such section) who are receiving services from
22 such hospitals.

23 (2) REPORT.—Not later than October 1, 2018,
24 the Comptroller General shall submit to Congress a
25 report on the study conducted under paragraph (1),

1 including recommendations for such legislation and
 2 administrative action as the Comptroller General de-
 3 termines appropriate.

4 **SEC. 105. TEMPORARY EXCEPTION TO SITE NEUTRAL PAY-**
 5 **MENT RATE FOR CERTAIN DISCHARGES**
 6 **FROM LONG-TERM CARE HOSPITALS THAT**
 7 **INVOLVE SEVERE WOUNDS.**

8 (a) IN GENERAL.—Section 1886(m)(6) of the Social
 9 Security Act (42 U.S.C. 1395ww(m)(6)), as amended by
 10 section 104, is further amended—

11 (1) in subparagraph (A)(i) by striking “and
 12 (F)” and inserting “(F), and (G)”;

13 (2) in subparagraph (E)(i)(I)(aa), by striking
 14 “the amendment made” and all that follows before
 15 the semicolon and inserting “the last sentence of
 16 subsection (d)(1)(B)”;

17 (3) by adding at the end the following new sub-
 18 paragraph:

19 “(G) ADDITIONAL TEMPORARY EXCEPTION
 20 FOR CERTAIN SEVERE WOUND DISCHARGES
 21 FROM CERTAIN LONG-TERM CARE HOSPITALS.—

22 “(i) IN GENERAL.—For a discharge
 23 occurring in a cost-reporting period begin-
 24 ning during fiscal year 2018, subpara-
 25 graph (A)(i) shall not apply (and payment

1 shall be made to a long-term care hospital
2 without regard to this paragraph) if such
3 discharge—

4 “(I) is from a long-term care
5 hospital identified by the last sentence
6 of subsection (d)(1)(B);

7 “(II) is classified under MS-
8 LTCH-DRG 602, 603, 539, or 540;
9 and

10 “(III) is with respect to an indi-
11 vidual treated by a long-term care
12 hospital for a severe wound.

13 “(ii) SEVERE WOUND DEFINED.—In
14 this subparagraph, the term ‘severe wound’
15 means a wound which is a stage 3 wound,
16 stage 4 wound, unstageable wound, non-
17 healing surgical wound, or fistula as identi-
18 fied in the claim from the long-term care
19 hospital.

20 “(iii) WOUND DEFINED.—In this sub-
21 paragraph, the term ‘wound’ means an in-
22 jury involving division of tissue or rupture
23 of the integument or mucous membrane
24 with exposure to the external environ-
25 ment.”.

1 (b) STUDY AND REPORT TO CONGRESS.—

2 (1) STUDY.—The Comptroller General of the
3 United States shall, in consultation with relevant
4 stakeholders, conduct a study on the treatment
5 needs of individuals entitled to benefits under part
6 A of title XVIII of the Social Security Act or en-
7 rolled under part B of such title who require special-
8 ized wound care, and the cost, for such individuals
9 and the Medicare program under such title, of treat-
10 ing severe wounds in rural and urban areas. Such
11 study shall include an assessment of—

12 (A) access of such individuals to appro-
13 priate levels of care for such cases;

14 (B) the potential impact that section
15 1886(m)(6)(A)(i) of such Act (42 U.S.C.
16 1395ww(m)(6)(A)(i)) will have on the access,
17 quality, and cost of care for such individuals;
18 and

19 (C) how to appropriately pay for such care
20 under the Medicare program under such title.

21 (2) REPORT.—Not later than October 1, 2020,
22 the Comptroller General shall submit to Congress a
23 report on the study conducted under paragraph (1),
24 including recommendations for such legislation and

1 administrative action as the Comptroller General de-
 2 termines appropriate.

3 **TITLE II—OTHER PROVISIONS**

4 **SEC. 201. NO PAYMENT FOR ITEMS AND SERVICES FUR-** 5 **NISHED BY NEWLY ENROLLED PROVIDERS** 6 **OR SUPPLIERS WITHIN A TEMPORARY MORA-** 7 **TORIUM AREA.**

8 (a) MEDICARE.—Section 1866(j)(7) of the Social Se-
 9 curity Act (42 U.S.C. 1395cc(j)(7)) is amended—

10 (1) in the paragraph heading, by inserting “;
 11 NONPAYMENT” before the period; and

12 (2) by adding at the end the following new sub-
 13 paragraph:

14 “(C) NONPAYMENT.—

15 “(i) IN GENERAL.—No payment may
 16 be made under this title or under a pro-
 17 gram described in subparagraph (A) with
 18 respect to an item or service described in
 19 clause (ii).

20 “(ii) ITEM OR SERVICE DESCRIBED.—
 21 An item or service described in this clause
 22 is an item or service furnished—

23 “(I) within a geographic area
 24 with respect to which a temporary

1 moratorium imposed under subpara-
2 graph (A) is in effect; and

3 “(II) by a provider of services or
4 supplier that meets the requirements
5 of clause (iii).

6 “(iii) REQUIREMENTS.—For purposes
7 of clause (ii), the requirements of this
8 clause are that a provider of services or
9 supplier—

10 “(I) enrolls under this title on or
11 after the effective date of such tem-
12 porary moratorium; and

13 “(II) is within a category of pro-
14 viders of services and suppliers (as de-
15 scribed in subparagraph (A)) subject
16 to such temporary moratorium.

17 “(iv) PROHIBITION ON CHARGES FOR
18 SPECIFIED ITEMS OR SERVICES.—In no
19 case shall a provider of services or supplier
20 described in clause (ii)(II) charge an indi-
21 vidual or other person for an item or serv-
22 ice described in clause (ii) furnished to an
23 individual entitled to benefits under part A
24 or enrolled under part B or an individual

1 under a program specified in subparagraph
 2 (A).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) MEDICAID.—

5 (A) IN GENERAL.—Section 1903(i)(2) of
 6 the Social Security Act (42 U.S.C. 1396b(i)(2))
 7 is amended—

8 (i) in subparagraph (A), by striking
 9 the comma at the end and inserting a
 10 semicolon;

11 (ii) in subparagraph (B), by striking
 12 “or” at the end; and

13 (iii) by adding at the end the fol-
 14 lowing new subparagraph:

15 “(D) subject to section 1902(kk)(4)(A)(ii)(II),
 16 within a geographic area that is subject to a morato-
 17 rium imposed under section 1866(j)(7) by a provider
 18 or supplier that meets the requirements specified in
 19 subparagraph (C)(iii) of such section, during the pe-
 20 riod of such moratorium; or”.

21 (B) EXCEPTION WITH RESPECT TO AC-
 22 CESS.—Section 1902(kk)(4)(A)(ii) of the Social
 23 Security Act (42 U.S.C. 1396a(kk)(4)(A)(ii)) is
 24 amended to read as follows:

25 “(ii) EXCEPTIONS.—

1 “(I) COMPLIANCE WITH MORATO-
 2 RIUM.—A State shall not be required
 3 to comply with a temporary morato-
 4 rium described in clause (i) if the
 5 State determines that the imposition
 6 of such temporary moratorium would
 7 adversely impact beneficiaries’ access
 8 to medical assistance.

9 “(II) FFP AVAILABLE.—Not-
 10 withstanding section 1903(i)(2)(D),
 11 payment may be made to a State
 12 under this title with respect to
 13 amounts expended for items and serv-
 14 ices described in such section if the
 15 Secretary, in consultation with the
 16 State agency administering the State
 17 plan under this title (or a waiver of
 18 the plan), determines that denying
 19 payment to the State pursuant to
 20 such section would adversely impact
 21 beneficiaries’ access to medical assist-
 22 ance. ”.

23 (C) STATE PLAN REQUIREMENT WITH RE-
 24 SPECT TO LIMITATION ON CHARGES TO BENE-
 25 FICIARIES.—Section 1902(kk)(4)(A) of the So-

cial Security Act (42 U.S.C. 1396a(kk)(4)(A))
is amended by adding at the end the following
new clause:

“(iii) LIMITATION ON CHARGES TO
BENEFICIARIES.—The State prohibits, dur-
ing the period of such a moratorium, a
provider meeting the requirements speci-
fied in subparagraph (C)(iii) of section
1866(j)(7) from charging an individual or
other person eligible to receive medical as-
sistance under the State plan under this
title (or a waiver of the plan) for an item
or service described in section
1903(i)(2)(D) furnished to such an indi-
vidual.”.

(2) CORRECTING AMENDMENTS TO RELATED
PROVISIONS.—

(A) SECTION 1866(j).—Section 1866(j) of
the Social Security Act (42 U.S.C. 1395cc(j)) is
amended—

(i) in paragraph (1)(A)—

(I) by striking “paragraph (4)”
and inserting “paragraph (5)”;

(II) by striking “moratoria in ac-
cordance with paragraph (5)” and in-

1 serting “moratoria in accordance with
2 paragraph (7)”; and

3 (III) by striking “paragraph (6)”
4 and inserting “paragraph (9)”; and

5 (ii) by redesignating the second para-
6 graph (8) (added by section 1304(1) of
7 Public Law 111–152) as paragraph (9).

8 (B) SECTION 1902(kk).—Section 1902(kk)
9 of such Act (42 U.S.C. 1396a(kk)) is amend-
10 ed—

11 (i) in paragraph (1), by striking “sec-
12 tion 1886(j)(2)” and inserting “section
13 1866(j)(2)”;

14 (ii) in paragraph (2), by striking “sec-
15 tion 1886(j)(3)” and inserting “section
16 1866(j)(3)”;

17 (iii) in paragraph (3), by striking
18 “section 1866(j)(4)” and inserting “section
19 1866(j)(5)”;

20 (iv) in paragraph (4)(A), by striking
21 “section 1886(j)(6)” and inserting “section
22 1866(j)(7)”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section (other than subsection (b)(2)) shall apply with

- 1 respect to items and services furnished on or after the date
- 2 that is one year after the date of enactment of this section.

