| CMS Manual System | Department of Health & Human Services (DHHS) |
| --- | --- |
| Pub 100-20 One-Time Notification | Centers for Medicare & Medicaid Services (CMS) |
| Transmittal 11878 | Date: February 23, 2023 |
| | Change Request 13103 |

**SUBJECT: Extensions of Certain Temporary Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital (MDH) Program under the Inpatient Prospective Payment System (IPPS) Provided by the Further Continuing Appropriations and Extensions Act, 2023, and the Consolidated Appropriations Act, 2023**

**I. SUMMARY OF CHANGES:** The purpose of this Change Request (CR) is to provide information and implementation instructions for sections 101 and 102 of the Further Continuing Appropriations and Extensions Act, 2023 and sections 4101 and 4102 of the Consolidated Appropriations Act, 2023.

**EFFECTIVE DATE: December 17, 2022**
**Unless otherwise specified, the effective date is the date of service.*
**IMPLEMENTATION DATE: March 10, 2023**

***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 | |

**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: 11878 | Date: February 23, 2023 | Change Request: 13103 |
|---|---|---|---|

**SUBJECT: Extensions of Certain Temporary Changes to the Low-Volume Hospital Payment Adjustment and the Medicare Dependent Hospital (MDH) Program under the Inpatient Prospective Payment System (IPPS) Provided by the Further Continuing Appropriations and Extensions Act, 2023, and the Consolidated Appropriations Act, 2023**

**EFFECTIVE DATE: December 17, 2022**
**Unless otherwise specified, the effective date is the date of service.*
**IMPLEMENTATION DATE: March 10, 2023**

## I. GENERAL INFORMATION

**A. Background:** The Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (Public Law 117-180) provided for the extension of the temporary changes to the qualifying criteria payment adjustment methodology for certain low volume hospitals and the extension of the MDH program through December 16, 2022. These extensions were implemented in Change Request (CR) 12970 (Transmittal 11740; December 9, 2022).

On December 16, 2022, President Biden signed into law the Further Continuing Appropriations and Extensions Act, 2023 (Public Law 117-229). Section 101 provided an extension of the temporary changes to the qualifying criteria and payment adjustment methodology for certain low-volume hospitals and section 102 provided an extension of the MDH program through December 23, 2022

In addition, on December 29, 2022 President Biden signed into law the Consolidated Appropriations Act, 2023 (CAA 2023) (Public Law 117-328) which extended the temporary changes to the qualifying criteria and payment adjustment methodology for certain low-volume hospitals and the MDH program through September 30, 2024.

**B. Policy: 1. Low-Volume Hospitals – Criteria and Payment Adjustments for FY 2023**

The regulations implementing the low-volume hospital payment adjustment policy are at § 412.101. The Bipartisan Budget Act of 2018 modified the definition of a low-volume hospital and the methodology for calculating the payment adjustment for low-volume hospitals under section 1886(d)(12) of the Act for FYs 2019 through 2022. Under these changes, to qualify a hospital must have less than 3,800 total discharges and be located more than 15 road miles from the nearest IPPS hospital, and the applicable percentage increase is based on a continuous, linear sliding scale ranging from an additional 25 percent payment adjustment for low-volume hospitals with 500 or fewer discharges to a zero percent additional payment for low-volume hospitals with more than 3,800 discharges. (For additional information, refer to the FY 2019 IPPS/Long-Term Care Hospital (LTCH) Prospective Payment System (PPS) final rule (83 FR 41398 through 41401).) These specific amendments were initially extended through December 16, 2022 by the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (as addressed in CR 12970), and then were extended through December 23, 2022, by section 101 of the Further Continuing Appropriations and Extensions Act, 2023, and subsequently further extended through September 30, 2024, by the Consolidated Appropriations Act, 2023.

Under section 1886(d)(12)(C)(i) of the Act, as amended, for FYs 2023 and 2024, a low-volume hospital must be more than 15 road miles from another subsection (d) hospital. In accordance with the existing regulations at § 412.101(a), the term "road miles" is defined to mean "miles" as defined at § 412.92(c)(1) (75 FR 50238 through 50275 and 50414).

Under section 1886(d)(12)(C)(i)(III) of the Act, as amended, for FYs 2023 and 2024, a low-volume hospital must have less than 3,800 discharges during the fiscal year. Consistent with the requirements of section 1886(d)(12)(C)(ii) of the Act, the term "discharge" for purposes of this provision refers to total discharges, regardless of payer (that is, Medicare and non-Medicare discharges). We note that the low-volume hospital criteria and payment adjustment for FYs 2019 through FY 2022, as well as the extension for the portion of FY 2023 provided by Public Law 117-180 (that is, for discharges on or before December 16, 2022), were also based on total discharges, regardless of payer. Under § 412.101(b)(2)(iii), for FYs 2019 through 2022, the hospital's most recently submitted cost report is used to determine if the hospital meets the discharge criterion to receive the low-volume payment adjustment in the current year. We use cost report data to determine if a hospital meets the discharge criterion because this is the best available data source that includes information on both Medicare and non-Medicare discharges.

For purposes of the low-volume hospital adjustment for the portion of FY 2023 occurring on or after December 17, 2022, the number of total discharges is determined in a manner consistent with how it was determined for FY 2019 through FY 2022. That is, to implement the extension of the temporary changes in the low-volume hospital payment policy for the remainder of FY 2023, in accordance with the existing regulations at § 412.101(b)(2)(iii), the hospital's most recently submitted cost report is used to determine if the hospital meets the discharge criterion to receive the low-volume hospital payment adjustment in the current year. This is consistent with our implementation of the changes in FYs 2019 through 2022 as well as the extension for the portion of FY 2023 provided by Public Law 117-180.

Under section 1886(d)(12)(D)(ii) of the Act, as amended, for FYs 2023 and 2024, the low-volume hospital payment adjustment is determined using a continuous linear sliding scale ranging from 25 percent for low-volume hospitals with 500 or fewer discharges to 0 percent for low-volume hospitals with greater than 3,800 discharges. To implement the extension of these temporary changes in the low-volume hospital payment policy for the remainder of FY 2023, in accordance with the existing regulations at § 412.101(c)(3) and consistent with our implementation of those changes in FYs 2019 through 2022, as well as the extension for the portion of FY 2023 provided by Public Law 117-180:

- For low-volume hospitals with 500 or fewer total discharges, the low-volume hospital payment adjustment is 0.25.
- For low-volume hospitals with more than 500 total discharges but less than 3,800 total discharges, the low volume hospital payment adjustment is calculated as 0.25 - [0.25/3300] × (number of total discharges - 500) = (95/330) - (number of total discharges/13,200).

(For additional information, refer to the FY 2019 IPPS/LTCH PPS final rule (83 FR 41399).)

As specified in CR 12970, for the extension of the temporary changes to the low-volume hospital payment adjustment for FY 2023 discharges occurring on or before December 16, 2022, consistent with our previously established process, a hospital must have made a written request to its MAC. This request must have contained sufficient documentation to establish that the hospital meets the applicable mileage and discharge criteria so that the MAC could determine if the hospital qualifies as a low-volume hospital in accordance with the provisions of Public Law 117-180. **A hospital that qualified for the low volume hospital payment adjustment for its FY 2023 discharges occurring on or before December 16, 2022 does not need to notify its MAC and will continue to receive the applicable low-volume hospital payment adjustment** for its FY 2023 discharges occurring on or after December 17, 2022, without reapplying, provided it continues to meet the mileage criterion (that is, the hospital continues to be located more than 15 road miles from any other subsection (d) hospital). (This is consistent with the extension of temporary changes to the low-volume hospital payment adjustment for the remainder of FY 2014, for discharges occurring on or after April 1, 2014 (see 79 FR 34446).)

However, for **a hospital that did not qualify for the low-volume hospital payment adjustment for its FY 2023 discharges occurring on or before December 16, 2022**, in order to receive the low-volume hospital payment adjustment for FY 2023 discharges occurring on or after December 17, 2022, consistent with our

previously established procedure, **a hospital must notify and provide documentation in writing to its MAC that it meets both the applicable mileage criterion for FY 2023 and the discharge criterion applicable for FY 2023 based upon the most recently submitted cost report.** Specifically, for such hospitals, in order for the applicable low-volume percentage increase to be applied to payments for its FY 2023 discharges occurring on or after December 17, 2022, **a hospital's written request must be received by its MAC no later than March 15, 2023**. In addition, a hospital that missed the request deadline for FY 2023 discharges occurring on or before December 16, 2022 but qualified for the low-volume payment adjustment in FY 2022 may receive a low-volume payment adjustment for its FY 2023 discharges occurring on or after December 17, 2022 without reapplying if it continues to meet the applicable discharge criterion and mileage criterion. However, the hospital must send written verification that is received by its MAC no later than March 15, 2023, that it continues to meet the mileage criterion, and that it meets the discharge criterion based upon the most recently submitted cost report. If a hospital's written request or written verification for low-volume hospital status for FY 2023 discharges occurring on or after December 17, 2022 is received after March 15, 2023, and if the MAC determines the hospital meets the criteria to qualify as a low-volume hospital, the MAC will apply the low-volume hospital payment adjustment to determine the payment for the hospital's FY 2023 discharges, effective prospectively within 30 days of the date of the MAC's low-volume hospital status determination.

The Pricer applies the applicable low-volume hospital payment adjustment factor from the Provider Specific File (PSF) for hospitals that have a value of 'Y' in the low-volume hospital indicator field on the PSF. Therefore, for hospitals that meet both the discharge criterion and the mileage criterion applicable for FY 2023, MACs shall enter a value of 'Y' for the low-volume payment adjustment factor field in the PSF (position 74) and shall update the low-volume adjustment factor field in the PSF (positions 252-258) with a value greater than 0 and less than or equal to 0.250000 calculated in accordance with the existing regulations at § 412.101(c)(3) as described above. Any hospital that does not meet either the discharge or mileage criteria is not eligible to receive a low-volume payment adjustment for FY 2023, and the MAC must ensure the low-volume hospital indicator field on the PSF contains a value of 'blank' and shall update the low-volume payment adjustment factor field on the PSF to hold a value of 'blank'.

**2. Extension of the Medicare-Dependent Hospital (MDH) Program**

a. General

The MDH program was initially extended through December 16, 2022 (as addressed in CR 12970). Subsequently, the MDH program was extended through December 23, 2022, by section 102 of the Further Continuing Appropriations and Extensions Act, 2023 (Public Law 117-229), and further extended through September 30, 2024, by section 4102 the Consolidated Appropriations Act, 2023 (CAA 2023) (Public Law 117 328).

b. Continuity and Reinstatement of MDH Status

The Further Continuing Appropriations and Extensions Act, 2023 was signed into law on December 16, 2022, prior to the December 17, 2022 expiration of the MDH program. As noted above, section 102 of the Further Continuing Appropriations and Extensions Act extended the MDH program through December 23, 2022.

The CAA 2023 was signed into law on December 29, 2022, shortly after the December 24, 2022 expiration. As noted above, Section 4102 of the CAA 2023 extends the MDH program through FY 2024, that is, for discharges occurring on or before September 30, 2024.

The regulations at § 412.92(b)(2)(v) allowed MDHs to apply for classification as a Sole Community Hospitals (SCH) by November 17, 2022, (that is, 30 days prior to the anticipated expiration of the MDH program on December 17, 2022), and if approved, to be granted such status effective with the expiration of the MDH program. However, since the MDH program did not, in fact, expire as of December 17, 2022, any hospitals that applied in this manner would not be classified as a SCH as of December 17, 2022 and would

retain MDH classification. We note that the subsequent one-week extension provided by section 102 of the Further Continuing Appropriations and Extensions Act, 2023 would likely not have allowed providers to timely request classification for SCH status per the regulations at § 412.92(b)(2)(v) and we are not aware of any providers that did so. If there are such providers, they should contact their MACs for further information on their MDH status. Therefore, providers that were classified as MDHs as of December 16, 2022 generally will continue to be classified as MDHs effective December 17, 2022 through December 23, 2022, and will be reinstated as MDHs effective December 24, 2022, with no need to reapply for MDH classification. However, if an MDH cancelled its rural classification under § 412.103(g) effective on or after October 1, 2022, its MDH status may not be applied continuously or automatically reinstated, as applicable (and as described previously).

In order to meet the criteria to become an MDH, generally a hospital must be located in a rural area. To qualify for MDH status, some MDHs may have reclassified as rural under the regulations at §412.103. With the anticipated expiration of the MDH provision, some of these providers may have requested a cancellation of their rural classification. Therefore, in order to qualify for MDH status, these providers must request to be reclassified as rural under 42 CFR 412.108(b) and reapply for MDH classification in accordance with the regulations as 42 CFR 412.108(b), and meet the classification criteria at 42 CFR 412.108(a).

The existing Provider Type field on the PSF (positions 55-56 – Provider Type) must be updated by the MAC to hold a value of "14" or "15" (as applicable) if the provider was classified as an MDH as of December 16, 2022. Any hospital that requested a cancellation of its rural classification under §412.103(g) will not be eligible for MDH classification as of December 17, 2022 or December 24, 2022, as applicable, and the MAC must ensure the Provider Type field on the PSF (positions 55-56 – Provider Type) has been updated to hold a value of "00"or "07" (as applicable).

We note, the regulations at § 412.108(b)(5) require MACs to evaluate on an ongoing basis whether or not a hospital continues to qualify for MDH status. However, due to the COVID-19 public health emergency (PHE), CMS issued a blanket waiver of certain MDH eligibility requirements at § 412.108(a). When the PHE ends, MACs will resume their standard practice for evaluation of all eligibility requirements. (Refer to https://www.cms.gov/files/document/covid-19-emergency-declaration-waivers.pdf or Change Request 12070 (Transmittal 10530, December 23, 2020) for additional information.)

c. MAC Implementation Files

In conjunction with this CR, we have published files to assist the MACs in implementing the requirements of this CR. These files can be found in MAC Implementation File 11 available on the FY 2023 MAC Implementation Files webpage at: https://www.cms.gov/medicare/acute-inpatient-pps/fy-2023-ipps-final-rule-home-page#MAC.

The following attachments will be available in **MAC Implementation File 11**:

- Attachment 1 outlines the various possible actions to be followed for each former MDH and the corresponding examples for each scenario.
- Attachment 2 contains a draft letter with text corresponding to the applicable scenarios outlined in Attachment 1. Each MAC shall add to each letter information specific to that provider regarding how it is affected by the MDH program extension; that is, notifying the provider of its status under the extension of the MDH program.

Notification to providers is necessary only if (1) the provider applied for SCH classification per the regulations at §412.92(b)(2)(v) or (2) the provider cancelled its rural reclassification under §412.103.

d. Hospital Specific (HSP) Rate Update for MDHs

For the payment of FY 2023 discharges occurring on or after December 17, 2022 and before September 30, 2023, the Hospital Specific (HSP) amount for MDHs in the PSF will continue to be entered in FY 2018 dollars. The Pricer will apply all updates and other adjustment factors to the HSP amount for FY 2019 and beyond.

## II. BUSINESS REQUIREMENTS TABLE

*"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.*

| Number | Requirement | Responsibility | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | A/B MAC | | | DME MAC | Shared-System Maintainers | | | | Other |
| | | A | B | HHH | | FISS | MCS | VMS | CWF | |
| 13103.1 | Medicare contractors shall update the Provider Specific File (PSF), Low-Volume Indicator (File Position 74) with a ‘Y’ and Low-Volume Adjustment Factor (File Positions 252-258) for those IPPS hospitals that meet both the discharge and mileage criteria for a low-volume hospital for Fiscal Year (FY) 2023 discharges occurring on or after December 17, 2022 (as described in the policy section) within 2 weeks of the implementation date of this CR or the receipt of the hospital's notification, whichever is later. | X | | | | | | | | IPPS Pricer |
| 13103.2 | Medicare contractors shall update the PSF, Provider Type (File Positions 55-56) with a ‘14’ or ‘15’ for those IPPS hospitals that qualify as an MDH for discharges on or after December 17, 2022, with an effective date of December 17, 2022, within 2 weeks of the implementation date of this change request. | X | | | | | | | | |
| 13103.3 | Medicare contractors shall notify impacted IPPS hospitals with the letter in Attachment 2. | X | | | | | | | | |
| 13103.4 | Medicare contractors shall reprocess IPPS claims impacted by this change request with a discharge date on or after December 17, 2022, through the implementation of this change request within 75 days of the implementation date of this change request. | X | | | | | | | | |

## III. PROVIDER EDUCATION TABLE

| Number | Requirement | Responsibility | | | | |
|---|---|---|---|---|---|---|
| | | A/B MAC | | | DME MAC | CEDI |
| | | A | B | HHH | | |
| 13103.5 | Medicare Learning Network® (MLN): CMS will market provider education content through the MLN Connects® newsletter shortly after CMS releases the CR. MACs shall follow IOM Pub. No. 100-09 Chapter 6, Section 50.2.4.1 instructions for distributing the MLN Connects newsletter information to providers and link to relevant information on your website. You may supplement MLN content with your local information after we release the MLN Connects newsletter. Subscribe to the "MLN Connects" listserv to get MLN content notifications. You don't need to separately track and report MLN content releases when you distribute MLN Connects newsletter content per the manual section referenced above. | 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):** Allison Bramlett, allison.bramlett@cms.hhs.gov , Shevi Marciano, shevi.marciano@cms.hhs.gov , Michele Hudson, michele.hudson@cms.hhs.gov , Ashli Clark, ashli.clark@cms.hhs.gov

**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**

**Examples:**

Example 1: Hospital A was classified as an MDH prior to the December 17, 2022 expiration of the MDH program. Hospital A retained its rural classification and did not reclassify as an SCH. Hospital A's MDH status will continue to apply from December 17, 2022.

Example 2: Hospital A was classified as an MDH prior to the December 24, 2022 expiration of the MDH program. Hospital A retained its rural classification and did not reclassify as an SCH. Hospital A's MDH status will be reinstated from December 24, 2022.

Example 3: Hospital B was classified as an MDH prior to the December 17, 2022 expiration of the MDH program. In accordance with the regulations at §412.92(b)(2)(v) and in anticipation of the expiration of the MDH program, Hospital B applied for classification as an SCH by November 17, 2022, and was approved for SCH status effective with the anticipated expiration of the MDH program on December 17, 2022. However, since the SCH approval was contingent on the expiration of the MDH program and the program did not, in fact, expire, Hospital B's MDH status will continue to apply from December 17, 2022 and its SCH classification will not take effect.

Example 4: Hospital D was classified as an MDH prior to the December 17, 2022 expiration of the MDH program. In anticipation of the expiration of the MDH program, Hospital D requested that its rural classification be cancelled in accordance with the regulations at §412.103(g). Hospital D's rural classification was cancelled effective December 17, 2022. Hospital D's MDH status will therefore be cancelled as of December 17, 2022. In order to reclassify as an MDH, Hospital D must request to be reclassified as rural under §412.103(b) and must reapply for MDH status under §412.108(b).

Example 5: Hospital E was classified as an MDH prior to the December 17, 2022 expiration of the MDH program. In anticipation of the expiration of the MDH program, Hospital E requested that its rural classification be cancelled in accordance with the regulations at §412.103(g). Hospital E's rural classification was cancelled effective December 27, 2022. Hospital E's MDH status will continue to apply but only for the portion of time in which it met the criteria for MDH status. Since Hospital E cancelled its rural status and became urban effective December 27, 2022, MDH status will only continue to apply December 17, 2022 through December 26, 2022 and will be cancelled effective December 27, 2022. In order to reclassify as an MDH, Hospital E must request to be reclassified as rural under §412.103(b) and must reapply for MDH status under §412.108(b).

[DATE]
HOSPITAL CONTACT
HOSPITAL NAME
HOSPITAL ADDRESS
CITY, STATE, ZIP

Re: Section 102 of the Further Continuing Appropriations and Extensions Act, 2023 and section 4102 of the Consolidated Appropriations Act, 2023; Extension of the Medicare-Dependent Hospital Program

Provider Name:
CMS Certification Number(CCN): xx-xxxx

Dear {Contact Name},

As part of the Further Continuing Appropriations and Extensions Act, 2023 and the Consolidated Appropriations Act, 2023, Congress reinstated the Medicare Dependent Hospital (MDH) program through September 30, 2024. Prior to enactment of that legislation, the MDH program had been set to expire December 17, 2022. Generally, providers that were classified as MDHs as of December 16, 2022 will continue to be classified as MDHs with no need to reapply for MDH classification. This letter serves as notification regarding {Provider Name's} MDH status.

<Insert any of the following paragraphs, as applicable:>

a) <*{Provider Name}* had requested classification for SCH status in accordance with the regulations at 42 CFR 412.92(b)(2)(v) and was approved effective with the anticipated expiration of the MDH program on December 17, 2022. However, since the MDH program was extended prior to December 17, 2022 and did not in fact expire, the SCH classification will not take effect. *{Provider Name}'s* MDH classification will continue to apply.

b) <*{Provider Name}* requested a cancellation of its rural status under 42 CFR 412.103 and was approved for the cancellation effective December 17, 2022. This cancellation precludes {*Provider Name}* from continuing to be classified as a MDH. Therefore, in order to be classified as an MDH, *{Provider Name}* must submit a request for reclassification as a rural hospital under the regulations at 42 CFR 412.103(b) and must reapply for MDH classification in accordance with the regulations at 42 CFR 412.108(b).>

c) < {*Provider name}* requested a cancellation of its rural status under 42 CFR 412.103 and was approved for the cancellation effective *{effective date - after December 17, 2022*}. *{Provider Name}* will continue to be classified as a MDH from December 16, 2022 through *{enter date of day immediately prior to effective date of cancellation of rural classification}* and its MDH status will be cancelled effective *{enter effective date of cancellation of rural classification}*. In order to be classified as an MDH, {*Provider Name}* must submit a request for reclassification as a rural hospital under the regulations at 42 CFR 412.103(b) and must reapply for MDH classification in accordance with the regulations at 42 CFR 412.108(b).>

Per the regulations at 42 CFR 412.108(b)(7), in order to be reclassified as an MDH following its disqualification, a hospital may reapply only after another cost report has been audited and settled.>

If you have any questions, please contact me at *{insert contact information}*.

Sincerely,