

Issue Brief

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Congress' FY 2023 Continuing Resolution Provides "Some" Relief for MDHs and Low-Volume Hospitals

On September 30th, the House of Representatives passed, on a 230 to 201 vote, the Senate amendment to H.R. 6833, the *Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023* (CR). House passage cleared the legislation and President Biden has signed such.

The measure provides two extensions of expiring Medicare provisions regarding low-volume and Medicare dependent hospitals that expire at the end of the CR period.

COMMENT

Once again, Congress has been unable to reach spending authority for FY 2023 in a timely manner. The CR keeps the Federal government funded only through mid-December.

It appears both the low-volume and the Medicare Dependent Hospital adjustment appears to run only through December 17, 2022.

Below, we have excerpted the existing Medicare statute provisions on these items and have imposed the CR amendment changes.

SEC. 101. Extension of increased inpatient hospital payment adjustment for certain low-volume hospitals.

Payment adjustment for low-volume hospitals.—

(A) In general.—In addition to any payments calculated under this section for a subsection (d) hospital, for discharges occurring during a fiscal year (beginning with fiscal year 2005), the Secretary shall provide for an additional payment amount to each low-volume hospital (as defined in subparagraph (C)(i)) for discharges occurring during that fiscal year that is equal to the applicable percentage increase (determined under subparagraph (B) or (D) for the hospital involved) in the amount paid to such hospital under this section for such discharges (determined without regard to this paragraph).

(B) Applicable percentage increase.—For discharges occurring in fiscal years 2005 through 2010 and for discharges occurring ~~in fiscal year 2023 and subsequent fiscal years during the portion of fiscal year 2023 beginning on December 17, 2022, and ending on September 30, 2023, and in fiscal year 2024 and subsequent fiscal years~~; the Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) as follows:

(i) The Secretary shall determine the empirical relationship for subsection (d) hospitals between the standardized cost-per-case for such hospitals and the total number of discharges of such hospitals and the amount of the additional incremental costs (if any) that are associated with such number of discharges.

continued

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(ii) The applicable percentage increase shall be determined based upon such relationship in a manner that reflects, based upon the number of such discharges for a subsection (d) hospital, such additional incremental costs.

(iii) In no case shall the applicable percentage increase exceed 25 percent.

(C) Definitions.—

(i) Low-volume hospital.—For purposes of this paragraph, the term “low-volume hospital” means, for a fiscal year or **portion of a fiscal year**, a subsection (d) hospital (as defined in paragraph (1)(B)) that the Secretary determines is located more than 25 road miles (or, with respect to fiscal years 2011 through 2022 **and the portion of fiscal year 2023 beginning on October 1, 2022, and ending on December 16, 2022**, 15 road miles) from another subsection (d) hospital and has—

(I) with respect to each of fiscal years 2005 through 2010, less than 800 discharges during the fiscal year.

(II) with respect to each of fiscal years 2011 through 2018, less than 1,600 discharges of individuals entitled to, or enrolled for, benefits under part A during the fiscal year or portion of fiscal year;

(III) with respect to each of fiscal years 2019 through 2022 **and the portion of fiscal year 2023 beginning on October 1, 2022, and ending on December 16, 2022**, less than 3,800 discharges during the fiscal year; **and**

(IV) with respect **to the portion of Fiscal Year 2023 beginning on December 17, 2022 and ending on September 30, 2023, and fiscal year 2024**, and each subsequent fiscal year, less than 800 discharges during the fiscal year.

(ii) Discharge.—For purposes of subparagraphs (B) and (D) and clause (i),

the term “discharge” means an inpatient acute care discharge of an individual regardless (except as provided in clause (i) (II) and subparagraph (D)(i)) of whether the individual is entitled to benefits under part A.

(D) Temporary applicable percentage increase.—For discharges occurring in fiscal years 2011 through 2022, **or the portion of fiscal year 2023 beginning on October 1, 2022, and ending on December 16, 2022** the Secretary shall determine an applicable percentage increase for purposes of subparagraph (A) using a continuous linear sliding scale ranging from 25 percent for low-volume hospitals—

(i) with respect to each of fiscal years 2011 through 2018, with 200 or fewer discharges of individuals entitled to, or enrolled for, benefits under part A in the fiscal year to 0 percent for low-volume hospitals with greater than 1,500 discharges of such individuals in the fiscal year or portion of fiscal year; and

(ii) with respect to each of fiscal years 2019 through 2022 **and the portion of fiscal year 2023 beginning on October 1, 2022, and ending on December 16, 2022**, with 500 or fewer discharges in the fiscal year to 0 percent for low-volume hospitals with greater than 3,800 discharges in the fiscal year.

Implementation.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, including the amendments made by, this section by program instruction or otherwise.

SEC. 102. Extension of the Medicare-dependent hospital (MDH) program.

Payment adjustment for MDH hospitals.—

(G)(i) For any cost reporting period beginning on or after April 1, 1990, and before October 1, 1994, or discharges

occurring on or after October 1, 1997, and before ~~October 1, 2022~~ **December 17, 2022**, in the case of a subsection (d) hospital which is a Medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).

(ii) The amount determined under this clause is—

(I) for discharges occurring during the 36-month period beginning with the first day of the cost reporting period that begins on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii); and

(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, or discharges occurring on or after October 1, 1997, and before ~~October 1, 2022~~ **December 17, 2022**, 50 percent (or 75 percent in the case of discharges occurring on or after October 1, 2006) of the amount by which the hospital's target amount for the cost reporting period or for discharges in the fiscal year (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii).

(iii) In the case of a Medicare dependent, small rural hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iv) The term “Medicare-dependent, small rural hospital” means, with respect to any cost reporting period to which clause (i) applies, any hospital—

(I) that is located in--

(aa) a rural area; or

(bb) a State with no rural area (as defined in paragraph (2)(D)) and satisfies any of the criteria in subclause (I), (II), or (III) of paragraph (8)(E)(ii),

(II) that has not more than 100 beds,

(III) that is not classified as a sole community hospital under subparagraph (D), and

(IV) for which not less than 60 percent of its inpatient days or discharges during the cost reporting period beginning in fiscal year 1987, or two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, were attributable to inpatients entitled to benefits under part A.

Subclause (I)(bb) shall apply for purposes of payment under clause (ii) only for discharges of a hospital occurring on or after the effective date of a determination of Medicare-dependent small rural hospital status made by the Secretary with respect to the hospital after the date of the enactment of this sentence. For purposes of applying subclause (II) of paragraph (8)(E)(ii) under subclause (I)(bb), such subclause (II) shall be applied by inserting “as of January 1, 2018,” after “such State” each place it appears.

FINAL THOUGHT

Since Congress has extended these programs till December 17, one may assume Congress will continue them again. Why Congress did not extend these programs further is subject to speculation and political whims.

*Analysis provided for MHA
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