

## **Supporting Statement – Part A**

Temporary Reclassification for Grandfathered LTCH HwHs for Qualification for Temporary Exception from the Site Neutral Payment Rate for Certain Discharges  
(CMS-10610: OMB control number 0938-New)

### **Background**

The information in this collection will be used to temporarily reclassify an applicant grandfathered LTCH HwH for rural treatment for the purposes of the temporary exception from the long term care hospital (LTCH) prospective payment system (PPS) site neutral payment rate for severe wound care cases.

As background on the site neutral payment rate, section 1206 of the Bipartisan Budget Act of 2013 (Public Law 113-67) mandates changes to the payment system for LTCHs beginning with LTCH discharges occurring in cost reporting periods beginning on or after October 1, 2015. Section 1206 required the establishment of an alternate, generally lower, “site neutral” payment rate for Medicare inpatient discharges from an LTCH that fail to meet certain statutorily defined criteria. Discharges that meet the criteria will continue to be paid the LTCH PPS standard Federal payment rate. Under Public Law 113-67, the criteria for exclusion from the site neutral payment rate are: (1) The discharge from the LTCH does not have a principal diagnosis relating to a psychiatric diagnosis or to rehabilitation; (2) admission to the LTCH was immediately preceded by discharge from a subsection (d) hospital; and (3) the immediately preceding stay in a subsection (d) hospital included at least 3 days in an intensive care unit (ICU) (referred to in this final rule as the ICU criterion) or the discharge from the LTCH is assigned to a MS-LTC-DRG based on the patient's receipt of ventilator services of at least 96 hours (referred to in this final rule as the ventilator criterion). We implemented this statute in our FY 2016 rulemaking cycle and LTCHs which have begun their FY 2016 cost reporting periods have begun receiving site neutral payments for discharges that do not meet these criteria.

### **A. Justification**

#### **1. Need and Legal Basis**

Section 231 of the Consolidated Appropriations Act (CAA) of 2016 provides for a temporary exception from the site neutral payment rate for certain discharges for grandfathered LTCHs “treated as being located [in a rural area] pursuant to subsection (d)(8)(E)” of the Social Security Act (see Attachment A). The phrase “treated as being so located pursuant to subsection (d)(8)(E)” is internally inconsistent given the unique nature of LTCHs as a category of Medicare provider. There is currently no mechanism which an LTCH may use to be treated as rural pursuant to section 1886(d)(8)(E) of the Act because that section only

applies to subsection (d) hospitals, and LTCHs, by definition at section 1886(b)(1) of the Act are not subsection (d) hospitals.

For the purposes of implementing subparagraph (E) of section 1886(m)(6) of the Act as provided by the CAA, we are revising our regulations at Sec. 412.522(b)(2)(ii)(B)(2) to utilize the same administrative mechanisms used in the existing rural reclassification process for urban subsection (d) hospitals under Sec. 412.103, described later in this section. We also will allow grandfathered LTCH HwHs to apply to their RO for treatment as being located in a rural area for the sole purpose of qualifying for this temporary exclusion from the application of the site neutral payment rate.

For urban subsection (d) hospitals, and now temporarily LTCHs, we implemented the rural reclassification provision in the regulations at Sec. 412.103. In general, the provisions of Sec. 412.103 provides that a hospital that is located in an urban area may be reclassified as a rural hospital if it submits an application in accordance with our established criteria. It must also meet certain conditions which include the hospital being located in a rural census tract of a MSA or that the hospital is located in an area designated by any law or regulation of the state as a rural area or the hospital is designated as a rural hospital by state law or regulation. Paragraph (b) of Sec. 412.103 sets forth application requirements for a hospital seeking reclassification as rural under that section, which includes a written application mailed to the CMS regional office (RO) that contains an explanation of how the hospital meets the condition that constitutes the request for reclassification, including data and documentation necessary to support the request. As provided in paragraphs (c) and (d) of Sec. 412.103, the RO reviews the application and notifies the hospital of its approval or disapproval of the request within 60 days of the filing date, and a hospital that satisfies any of the criteria set forth Sec. 412.103(a) is considered as being located in the rural area of the state in which the hospital is located as of that filing date.

We note that this policy would only allow grandfathered LTCH HwHs to apply for this reclassification, and the rural treatment would only extend to this temporary exception for certain wound care discharges from the site neutral payment rate (meaning a grandfathered HwH LTCH will not be treated as rural for any other reason including, but not limited to, the 25 percent policy and wage index). We also note that any rural treatment under Sec. 412.103 for a grandfathered HwH LTCH will expire at the same time as this temporary provision (that is, December 31, 2016).

## 2. Information Users

This information will be used by CMS Regional offices and MACs to allow grandfathered LTCH HwHs to be treated as rural for implementation of Section 231 of the Consolidated Appropriations Act of 2016.

3. Use of Information Technology

There is no planned use of information technology. It is a paper process which is mailed to CMS ROs. Because the provision is temporary we do not plan to institute any advancements.

4. Duplication of Efforts

This information collection does not duplicate any other effort and the information cannot be obtained from any other source

5. Small Businesses

The process has been designed to collect from hospitals, including hospitals that qualify as small businesses, the minimal amount of information required to effectuate the provision with the least burden.

6. Less Frequent Collection

This is a one-time collection of information.

7. Special Circumstances

There are no special circumstances that would apply.

8. Federal Register/Outside Consultation

The emergency Federal Register notice was included as part of the interim final rule with comment period that published on April 21, 2016.

9. Payments/Gifts to Respondents

There will be no payment or gifts provided to respondents.

10. Confidentiality

There will be no personally identifiable information collected. Information on rural treatment will be shared with the hospital's MAC.

11. Sensitive Questions

There will be no sensitive questions.

12. Burden Estimates (Hours & Wages)

We estimate that each application will require 2.5 hours of work from each hospital (0.5 hours to fill out the application and 2 hours of record keeping). Based on the current information we have received from the MACs, out of the approximately 120 current LTCHs that existed in 1995, which is a necessary but not sufficient condition to be a grandfathered HWH, there are approximately 5 hospitals that currently meet the criteria of being a grandfathered HWH and would not be precluded from submitting an application. We note that as the MACs continue to update the list of grandfathered HWH that the number of potential applicants could increase. However, since it is possible that the number of applicants could rise to 10 or more, in an abundance of caution, we treating this information collection as being subject to the PRA. Therefore, we estimate that the aggregate number of hours associated with this request across all currently estimated eligible hospitals will be 12.5 (2.5 hours per hospital for 5 hospitals). We estimate a current, average salary of \$29 per hour (based on the "2015 Median usual weekly earnings (second quartile), Employed full time, Wage and salary workers, Management, professional, and related occupations" from the Current Population Survey, available here <http://www.bls.gov/webapps/legacy/cpswktab4.htm>) plus 100 percent for fringe benefits (\$58 per hour). Therefore, we estimate the total one-time costs associated with this request will be \$725 (12.5 hours x \$58 per hour). For purposes of OMB review and approval, the total one-time burden will be rounded to 13 hours, as OMB does not approve fractions of an hour.

13. Capital Costs

We estimate there will be no capital costs associated with this request.

14. Cost to Federal Government

Reclassification requests are processed by CMS regional offices. We estimate that, on average, each application will take 8 hours to process. Using the Washington, DC locality adjustment to a GS-13 hourly wage (\$44.15/hour), we estimate each application will cost, on average \$353.20. Multiplying this by the 5 applications we estimate we will receive, the one-time cost is estimated at \$1766.00.

15. Changes to Burden

This is a new information collection request.

16. Publication/Tabulation Dates

The results of this collection of information will not be published.

17. Expiration Date

There are no instruments associated with this information collection request on which we can display the expiration date.

18. Certification Statement

There are no exceptions.