


**Date:** April 28, 2016

**To:** Howard Shelanski  
Administrator, OIRA

**From:** Andy Slavitt   
Acting Administrator

**Subject:** **Request for Emergency Clearance Under the Paperwork Reduction Act -  
Temporary Reclassification for Grandfathered LTCH HwHs for  
Qualification for Temporary Exception from the Site Neutral Payment Rate  
for Certain Discharges (CMS-10619; OMB 0938-New)**

Justification

Section 231 of the Consolidated Appropriations Act of 2016 provides for a temporary exception from the lower site neutral payment rate under the Long Term Care Hospital (LTCH) Prospective Payment System (PPS) for certain hospital discharges from grandfathered Hospital Within Hospitals (HWHs) "treated as being located [in a rural area] pursuant to subsection (d)(8)(E)" of the Social Security Act. By law, this temporary exception expires on December 31, 2016. Determining if a grandfathered HWH may be treated as being located in a rural area requires information collection from those hospitals and this information collection may be subject to the Paperwork Reduction Act depending on the number of qualifying HWHs. We are implementing this information collection at CFR § 412.522(b)(2)(ii)(B)(2). The Centers for Medicare & Medicaid Services (CMS) requests approval of this information collection under the 5 CFR 1320.13(a)(2)(i) emergency clearance process in order to implement Section 231 of the Consolidated Appropriations Act of 2016 as expeditiously as possible. Public harm is reasonably likely to ensue if the normal clearance procedures are followed since the approval of this information collection process is essential to ensuring that qualifying grandfathered HWHs are not unduly delayed in obtaining the temporary exception authorized by the law before its expiration on December 31, 2016. Entities would be paid the (lower) site neutral rate until the information is collected. Without the information, we would not treat an entity as rural which would result in site neutral payment. Applications for reclassification are effective the date of the application, which means a delay in PRA approval results in a shorter period of relief for LTCHs that would otherwise benefit from the provision before its expiration.

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## Background

Section 231 of the Consolidated Appropriations Act of 2016 provides for a temporary exception from the site neutral payment rate under the LTCH-PPS 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. 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 urban subsection (d) hospitals, and now temporarily LTCHs, we implemented the rural reclassification provision in the regulations at § 412.103. In general, the provisions of § 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 and meets certain conditions, which include the hospital being located in a rural census tract of a MSA as determined under the most recent version of the Goldsmith Modification, the Rural Urban Commuting Area codes, as determined by the Office of Rural Health Policy (ORHP) of the Health Resources and Services Administration, or that the hospital is located in an area designated by any law or regulation of the state in which it is located as a rural area, or the hospital is designated as a rural hospital by state law or regulation. Paragraph (b) of § 412.103 sets forth application requirements for a hospital seeking reclassification as rural under that section, which includes a written application mailed to the Center for Medicare and Medicaid Services (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 § 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 (that is, the date the CMS RO receives the application), and a hospital (that satisfies any of the criteria set forth § 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 (meaning that the hospital would be treated as rural for the purposes of exclusion from the site neutral payment rate for severe wound discharges as of the filing date).

For the purposes of implementing subparagraph (E) of section 1886(m)(6) of the Act as provided by the Consolidated Appropriations Act, 2016, we are revising our regulations at §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 § 412.103 and allow grandfathered LTCH HwHs (previously defined in this IFC) 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. 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 the any rural treatment under § 412.103 for a grandfathered HwH LTCH will expire at the same time as this temporary provision (that is, December 31, 2016).

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Submission Schedule

Date	Activity
04/01/2016	Submit request to OMB
04/05/2016	Request OMB approval of emergency process
04/08/2016	Receive OMB comments for final version of emergency information collection request.
04/15/2016 or 04/17/2016	<ul style="list-style-type: none"><li>• Interim Final Rule to display at Office of the Federal Register (OFR)</li><li>• Emergency information collection request (ICR) will be submitted upon confirmation of OFR display</li></ul>
04/21/2016	<ul style="list-style-type: none"><li>• Interim Final Rule publishes in the <u>Federal Register</u></li><li>• Seven day public comment period begins</li></ul>
04/28/2016	<ul style="list-style-type: none"><li>• Seven day public comment period ends</li></ul>
05/05/2016	Requested OMB approval date

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