

Suspend the Rules and Pass the Bill, H.R. 5713, with An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

114TH CONGRESS
2^D 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,*

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

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

5 (b) **TABLE OF CONTENTS.**—This table of contents of
6 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 extension to the application of the Medicare LTCH site
neutral provisions for certain discharges with severe wounds.

TITLE II—OTHER PROVISIONS

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

7 **TITLE I—MEDICARE PART A**
8 **PROVISIONS**

9 **SEC. 101. EXTENSION OF CERTAIN LTCH MEDICARE PAY-**
10 **MENT RULES.**

11 (a) **25–PERCENT PATIENT THRESHOLD PAYMENT**
12 **ADJUSTMENT.**—Section 114(c)(1)(A) of the Medicare,
13 Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C.
14 1395ww note), as amended by section 4302(a) of division
15 B of the American Recovery and Reinvestment Act (Public
16 Law 111–5), sections 3106(a) and 10312(a) of Public
17 Law 111–148, and section 1206(b)(1)(B) of the Pathway
18 for SGR Reform Act of 2013 (division B of Public Law

1 113–67), is amended by striking “for a 9-year period” and
2 inserting “through June 30, 2016, and for discharges oc-
3 ccurring on or after October 1, 2016, and before July 1,
4 2017”.

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

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

16 (2) in subparagraph (B)—

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

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

21 (3) in subparagraph (C), by striking “for a 9-
22 year period” and inserting “through June 30, 2016,
23 and for discharges occurring on or after October 1,
24 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 AMENDMENTS.—

13 (1) Section 1899B(a)(2)(A)(iv) of the Social
14 Security Act (42 U.S.C. 1395lll(a)(2)(A)(iv)) is
15 amended by striking “1886(d)(1)(B)(iv)(II)” and in-
16 sserting “1886(d)(1)(B)(vi)”.

17 (2) Section 1886(m)(5)(F) of such Act (42
18 U.S.C. 1395ww(m)(5)(F)) is amended in each of
19 clauses (i) and (ii) by striking “(d)(1)(B)(iv)(II)”
20 and inserting “(d)(1)(B)(vi)”.

1 **SEC. 104. TEMPORARY EXCEPTION TO THE APPLICATION**
2 **OF THE MEDICARE LTCH SITE NEUTRAL PRO-**
3 **VISIONS FOR CERTAIN SPINAL CORD SPE-**
4 **CIALTY HOSPITALS.**

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

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

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

11 “(F) TEMPORARY EXCEPTION FOR CER-
12 TAIN SPINAL CORD SPECIALTY HOSPITALS.—
13 For discharges in cost reporting periods begin-
14 ning during fiscal years 2018 and 2019, sub-
15 paragraph (A)(i) shall not apply (and payment
16 shall be made to a long-term care hospital with-
17 out regard to this paragraph) if such discharge
18 is from a long-term care hospital that meets
19 each of the following requirements:

20 “(i) NOT-FOR-PROFIT.—The long-
21 term care hospital was a not-for-profit
22 long-term care hospital on June 1, 2014,
23 as determined by cost report data.

24 “(ii) PRIMARILY PROVIDING TREAT-
25 MENT FOR CATASTROPHIC SPINAL CORD
26 OR ACQUIRED BRAIN INJURIES OR OTHER

1 PARALYZING NEUROMUSCULAR CONDI-
2 TIONS.—Of the discharges in calendar year
3 2013 from the long-term care hospital for
4 which payment was made under this sec-
5 tion, at least 50 percent were classified
6 under MS–LTCH–DRGs 28, 29, 52, 57,
7 551, 573, and 963.

8 “(iii) SIGNIFICANT OUT-OF-STATE AD-
9 MISSIONS.—

10 “(I) IN GENERAL.—The long-
11 term care hospital discharged inpa-
12 tients (including both individuals enti-
13 tled to, or enrolled for, benefits under
14 this title and individuals not so enti-
15 tled or enrolled) during fiscal year
16 2014 who had been admitted from at
17 least 20 of the 50 States, determined
18 by the States of residency of such in-
19 patients and based on such data sub-
20 mitted by the hospital to the Sec-
21 retary as the Secretary may require.

22 “(II) IMPLEMENTATION.—Not-
23 withstanding any other provision of
24 law, the Secretary may implement

1 subclause (I) by program instruction
2 or otherwise.

3 “(III) NON-APPLICATION OF PA-
4 PERWORK REDUCTION ACT.—Chapter
5 35 of title 44, United States Code,
6 shall not apply to data collected under
7 this clause.”.

8 (b) STUDY AND REPORT ON THE STATUS AND VIA-
9 BILITY OF CERTAIN SPINAL CORD SPECIALTY LONG-
10 TERM CARE HOSPITALS.—

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

17 (A) The impact on such hospitals of the
18 classification and facility licensure by State
19 agencies of such hospitals.

20 (B) The Medicare payment rates for such
21 hospitals.

22 (C) Data on the number and health care
23 needs of Medicare beneficiaries who have been
24 diagnosed with catastrophic spinal cord or ac-
25 quired brain injuries or other paralyzing neuro-

1 muscular conditions (as described within the
2 discharge classifications specified in clause (ii)
3 of such section) who are receiving services from
4 such hospitals.

5 (2) REPORT.—Not later than October 1, 2018,
6 the Comptroller General shall submit to Congress a
7 report on the study conducted under paragraph (1),
8 including recommendations for such legislation and
9 administrative action as the Comptroller General de-
10 termines appropriate.

11 **SEC. 105. TEMPORARY EXTENSION TO THE APPLICATION**
12 **OF THE MEDICARE LTCH SITE NEUTRAL PRO-**
13 **VISIONS FOR CERTAIN DISCHARGES WITH SE-**
14 **VERE WOUNDS.**

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

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

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

24 (3) by adding at the end the following new sub-
25 paragraph:

1 “(G) ADDITIONAL TEMPORARY EXCEPTION
2 FOR CERTAIN SEVERE WOUND DISCHARGES
3 FROM CERTAIN LONG-TERM CARE HOSPITALS.—

4 “(i) IN GENERAL.—For a discharge
5 occurring in a cost reporting period begin-
6 ning during fiscal year 2018, subpara-
7 graph (A)(i) shall not apply (and payment
8 shall be made to a long-term care hospital
9 without regard to this paragraph) if such
10 discharge—

11 “(I) is from a long-term care
12 hospital identified by the last sentence
13 of subsection (d)(1)(B);

14 “(II) is classified under MS-
15 LTCH-DRG 602, 603, 539, or 540;
16 and

17 “(III) is with respect to an indi-
18 vidual treated by a long-term care
19 hospital for a severe wound.

20 “(ii) SEVERE WOUND DEFINED.—In
21 this subparagraph, the term ‘severe wound’
22 means a wound which is a stage 3 wound,
23 stage 4 wound, unstageable wound, non-
24 healing surgical wound, or fistula as identi-

1 fied in the claim from the long-term care
2 hospital.

3 “(iii) WOUND DEFINED.—In this sub-
4 paragraph, the term ‘wound’ means an in-
5 jury involving division of tissue or rupture
6 of the integument or mucous membrane
7 with exposure to the external environ-
8 ment.”.

9 (c) STUDY AND REPORT TO CONGRESS.—

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

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

22 (B) the potential impact that section
23 1886(m)(6)(A)(i) of such Act (42 U.S.C.
24 1395ww(m)(6)(A)(i)) will have on the access,

1 quality, and cost of care for such individuals;
2 and

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

5 (2) REPORT.—Not later than October 1, 2020,
6 the Comptroller General shall submit to Congress a
7 report on the study conducted under paragraph (1),
8 including recommendations for such legislation and
9 administrative action as the Comptroller General de-
10 termines appropriate.

11 **TITLE II—OTHER PROVISIONS**

12 **SEC. 201. NO PAYMENT FOR ITEMS AND SERVICES FUR-** 13 **NISHED BY NEWLY ENROLLED PROVIDERS** 14 **OR SUPPLIERS WITHIN A TEMPORARY MORA-** 15 **TORIUM AREA.**

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

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

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

22 “(C) NONPAYMENT.—

23 “(i) IN GENERAL.—No payment may
24 be made under this title or under a pro-
25 gram described in subparagraph (A) with

1 respect to an item or service described in
2 clause (ii) furnished on or after October 1,
3 2017.

4 “(ii) ITEM OR SERVICE DESCRIBED.—
5 An item or service described in this clause
6 is an item or service furnished—

7 “(I) within a geographic area
8 with respect to which a temporary
9 moratorium imposed under subpara-
10 graph (A) is in effect; and

11 “(II) by a provider of services or
12 supplier that meets the requirements
13 of clause (iii).

14 “(iii) REQUIREMENTS.—For purposes
15 of clause (ii), the requirements of this
16 clause are that a provider of services or
17 supplier—

18 “(I) enrolls under this title on or
19 after the effective date of such tem-
20 porary moratorium; and

21 “(II) is within a category of pro-
22 viders of services and suppliers (as de-
23 scribed in subparagraph (A)) subject
24 to such temporary moratorium.

1 “(iv) PROHIBITION ON CHARGES FOR
2 SPECIFIED ITEMS OR SERVICES.—In no
3 case shall a provider of services or supplier
4 described in clause (ii)(II) charge an indi-
5 vidual or other person for an item or serv-
6 ice described in clause (ii) furnished on or
7 after October 1, 2017, to an individual en-
8 titled to benefits under part A or enrolled
9 under part B or an individual under a pro-
10 gram specified in subparagraph (A).”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) MEDICAID.—

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

16 (i) in subparagraph (A), by striking
17 the comma at the end and inserting a
18 semicolon;

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

21 (iii)

22 “(D) with respect to any amount expended
23 for such an item or service furnished during
24 calendar quarters beginning on or after October
25 1, 2017, subject to section

1 1902(kk)(4)(A)(ii)(II), within a geographic area
2 that is subject to a moratorium imposed under
3 section 1866(j)(7) by a provider or supplier
4 that meets the requirements specified in sub-
5 paragraph (C)(iii) of such section, during the
6 period of such moratorium; or”.

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

11 “(ii) EXCEPTIONS.—

12 “(I) COMPLIANCE WITH MORATO-
13 RIUM.—A State shall not be required
14 to comply with a temporary morato-
15 rium described in clause (i) if the
16 State determines that the imposition
17 of such temporary moratorium would
18 adversely impact beneficiaries’ access
19 to medical assistance.

20 “(II) FFP AVAILABLE.—Not-
21 withstanding section 1903(i)(2)(D),
22 payment may be made to a State
23 under this title with respect to
24 amounts expended for items and serv-
25 ices described in such section if the

1 Secretary, in consultation with the
2 State agency administering the State
3 plan under this title (or a waiver of
4 the plan), determines that denying
5 payment to the State pursuant to
6 such section would adversely impact
7 beneficiaries' access to medical assist-
8 ance. ”.

9 (C) STATE PLAN REQUIREMENT WITH RE-
10 SPECT TO LIMITATION ON CHARGES TO BENE-
11 FICIARIES.—Section 1902(kk)(4)(A) of the So-
12 cial Security Act (42 U.S.C. 1396a(kk)(4)(A))
13 is amended by adding at the end the following
14 new clause:

15 “(iii) LIMITATION ON CHARGES TO
16 BENEFICIARIES.—With respect to any
17 amount expended for items or services fur-
18 nished during calendar quarters beginning
19 on or after October 1, 2017, the State pro-
20 hibits, during the period of a temporary
21 moratorium described in clause (i), a pro-
22 vider meeting the requirements specified in
23 subparagraph (C)(iii) of section 1866(j)(7)
24 from charging an individual or other per-
25 son eligible to receive medical assistance

1 under the State plan under this title (or a
2 waiver of the plan) for an item or service
3 described in section 1903(i)(2)(D) fur-
4 nished to such an individual.”.

5 (2) CORRECTING AMENDMENTS TO RELATED
6 PROVISIONS.—

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

10 (i) in paragraph (1)(A)—

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

13 (II) by striking “moratoria in ac-
14 cordance with paragraph (5)” and in-
15 serting “moratoria in accordance with
16 paragraph (7)”;

17 (III) by striking “paragraph (6)”
18 and inserting “paragraph (9)”;

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

22 (B) SECTION 1902(KK).—Section 1902(kk)
23 of such Act (42 U.S.C. 1396a(kk)) is amend-
24 ed—

- 1 (i) in paragraph (1), by striking “sec-
2 tion 1886(j)(2)” and inserting “section
3 1866(j)(2)”;
- 4 (ii) in paragraph (2), by striking “sec-
5 tion 1886(j)(3)” and inserting “section
6 1866(j)(3)”;
- 7 (iii) in paragraph (3), by striking
8 “section 1886(j)(4)” and inserting “section
9 1866(j)(5)”;
- 10 (iv) in paragraph (4)(A), by striking
11 “section 1886(j)(6)” and inserting “section
12 1866(j)(7)”.