

FACT SHEET

CMS’s Final Rule on Physician-Owned high Medicaid facilities in the CY 2021 OPPTS Rule

In the [finalized CY 2021 Hospital Outpatient Prospective Payment System \(OPPTS\)](#) rule, the Centers for Medicare & Medicaid Services (CMS) removed certain additional restrictions imposed on physician-owned hospitals qualifying as “high Medicaid facilities”.

CMS’ Tightly Structured Rule:

- **Is limited in scope and only applies to a small subset of safety-net hospitals (6 facilities nationwide);**
- **Does not eliminate Stark physician self-referral protections or allow unlimited hospital expansion;**
- **Increases access to care for low-income and Medicaid populations; and**
- **Aligns the regulations with Congressional intent and the statutory text.**

Sections 6001 and 10601 of the Patient Protection and Affordable Care Act (“PPACA”) and section 1106 of the Health Care and Education Reconciliation Act of 2010 (“HCERA”) prohibit the establishment of new physician owned hospitals and restrict the ability of those existing as of March 23, 2010 to expand. However, the law does allow community physician owned hospitals limited expansion if they are in an underserved area, approved by CMS, and qualify as a “high Medicaid facility”¹ or an “Applicable Hospital”.² Only 7 hospitals nationwide have been granted one of the two exceptions to-date.³

Recognizing the importance of increasing access to care for Medicaid beneficiaries, in drafting the ACA, Congress chose not to impose three additional restrictions on “high Medicaid facilities” that it did apply to hospitals qualifying as an “applicable hospital”.

Despite Congress’ intentional exemption for high Medicaid facilities, CMS imposed these additional restrictions on high Medicaid facilities⁴ causing unnecessary regulatory burden. However, CMS’ CY 2021 OPPTS’ rule aligns the regulations with Congress’ intent and allows these safety-net hospital to increase access to care in their communities:

3 Additional Growth Restrictions that Congress <i>only</i> applied to “applicable hospitals” in the ACA	CMS Rule Aligns Regulations with Statutory Text regarding high Medicaid facilities (HMF)
(1) Growth limited to 200% (2) Can apply for expansion only once every 2 years (3) Expansion limited to “main campus”	(1) Remove 200% limitation for high Medicaid facilities only (2) high Medicaid Facility can apply for expansion more than once every 2 years, but only once at a time (3) Expansion not limited to “main campus” for HMF only

What are high Medicaid facilities?

Hospitals qualifying as **high Medicaid facilities are community safety-net hospitals who serve a disproportionate share of low-income and Medicaid patients.**

By definition, to qualify as a high Medicaid facility, the hospital must be approved by CMS and meet the following criteria:

- (1) Not be the sole hospital in the county;
- (2) Have the highest Medicaid admission of any hospital in the county for the three most recent years; and
- (3) Certify that they do not discriminate against federal health care beneficiaries.

These hospitals are a lifeline for their communities and the removal of regulatory restrictions not intended by Congress will increase access to care for the most vulnerable.

Underscoring the high-bar to qualify as a high Medicaid facility, there are only 6 hospitals nationwide qualifying:

- (1) Deaconess Women’s Hospital, Newburg, IN
- (2) Harsha Behavioral Center, Terre Haute, IN
- (3) Lake Pointe Medical Center, Rowlett, TX
- (4) St. James Behavioral Hospital, Gozales, LA
- (5) Serenity Springs Hospital, Ruston, LA
- (6) DHR Health, Edinburg, TX (*pending*)

¹ 42 U.S.C. sec. 1395nn(i)(3)(F).

² 42 U.S.C. sec. 1395nn(i)(3)(E).

³ https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals

⁴ CY 2011 OPPTS/ASC final rule; [75 FR 71799, 72240](#); 42 C.F.R. 411.362(c)(1), (3) and (6).

Broad and Bipartisan Support for CMS’s Final Rule on Physician-Owned high Medicaid facilities

- **130+ Letters Supporting Including 30 Bipartisan Members of Congress**
 - Senators Cruz, Cornyn, Braun, Boozeman, Tillis, Lankford, Cotton, Young, Cassidy
 - Representatives Burgess, Gonzalez, Cole, Vela, Marshall, Westerman, Ferguson, Wenstrup, Harris, Gooden, Carter, Cardenas, Dunn, Mullin, San Nicolas, Jackson-Lee, Brady, Bucshon, Gooden, Cuellar, and Ruiz
- **38 National and State Organizations Supporting**
 - American Medical Association, Texas Medical Association, Physician Hospitals of America, American College of Cardiology, Association of Neurological Surgeons, American Association of Orthopaedic Surgeons, Arizona Medical Association, Baylor Scott & White Texas Spine & Joint Hospital, California Orthopaedic Association, Congress of Neurological Surgeons, Clinical Orthopaedic Society, DHR Health, Eastern Orthopaedic Association, Harsha Behavioral Center, Houston Physicians’ Hospital, Indiana State Medical Association, Maryland Orthopaedic Association, Methodist McKinney Hospital, Mississippi State Medical Association,, Ohio State Medical Association, Oklahoma State Medical Association, Ortho Forum, OSS Health, Pennsylvania Orthopaedic Society, Physician Hospitals of America, Renaissance Medical Foundation, Rothman Orthopaedic Institute, South Carolina Medical Association, Southern Orthopaedic Association, Surgical Specialty Center of Baton Rouge, Texas Orthopaedic Association, Texas Medical Association, Utah Medical Association, and Western Orthopaedic Association
- **100+ Physician Letters Supporting**
- **The Language of the ACA supports the CMS rule change on high Medicaid facilities because all the rule change does is align the regulations with the statutory language.**
- **Only 20 Letters Opposing** (mostly stock opposition letters) including AHA, FAH, and 2 Members of Congress

“Claim”	Rebuttals of Common Erroneous Arguments Against CMS’ Rule
<p>The rule effectively eviscerates the statutory moratorium on physician-owned hospital expansion and provides opportunity for gaming.</p>	<p>Claim Grade: False. The physician-owned hospital moratorium restricts physician-owned hospitals in two general ways. <i>First</i>, it effectively prohibits the establishment of new physician-owned hospitals by mandating that, in order to participate in Medicare, a physician-owned hospital must have had a provider agreement with CMS as of December 31, 2010. <i>Second</i>, the moratorium limits the ability of existing physician-owned hospitals to expand beyond the number of operating rooms, procedure rooms and beds for which they were licensed as of March 23, 2010. Under the law, physician-owned hospitals are able to apply for one of two expansion exceptions. To-date, only 8 hospitals nationwide have applied for and received an expansion exception by CMS (one pending).</p> <p>CMS’ final rule does not in any way, shape or form, change the moratorium OR the criteria for an existing physician owned hospital to qualify for one of the two expansion exceptions.</p>
<p>No justified reason for the change.</p>	<p>Claim Grade: Conjecture. CMS is justified in making the changes because doing so would better (literally) align the regulations with statutory text and Congressional intent. Congress did not impose the three additional restrictions on high Medicaid facilities because it recognized the importance of increasing access to care for Medicaid beneficiaries.</p>
<p>Misleading analysis of who is affected and that up to 24 facilities currently or soon could qualify as a high Medicaid facility.</p>	<p>Claim Grade: Red Herring. CMS’ final rule does NOT in any way shape or form change the criteria for a hospital to qualify as a high Medicaid facility. The rule only affects hospitals that can qualify as a high Medicaid facility under the statutory criteria established by Congress in the ACA. Thus, regardless of CMS’ final rule, the same number of hospitals qualify for a high Medicaid facility expansion exception. To-date, only 6 hospitals nationwide have qualified for the high Medicaid facility expansion exception.</p>