
42 C.F.R. § 411.363

Process for requesting an exception from the prohibition on facility expansion.

(a) *Definitions.* For purposes of this section—

Baseline number of operating rooms, procedure rooms, and beds means the number of operating rooms, procedure rooms, and beds for which the applicable hospital or high Medicaid facility is licensed as of March 23, 2010 (or, in the case of a hospital that did not have a provider agreement in effect as of March 23, 2010, but does have a provider agreement in effect on December 31, 2010, the date of effect of such agreement). For purposes of determining the number of beds in a hospital's baseline number of operating rooms, procedure rooms, and beds, a bed is included if the bed is considered licensed for purposes of State licensure, regardless of the specific number of beds identified on the physical license issued to the hospital by the State.

External data source means a data source that—

- (i) Is generated, maintained, or under the control of a State Medicaid agency;
- (ii) Is reliable and transparent;
- (iii) Maintains data that, for purposes of the process described in this section, are readily available and accessible to the requesting hospital, comparison hospitals, and CMS; and
- (iv) Maintains or generates data that, for purposes of the process described in this section, are accurate, complete, and objectively verifiable.

Main campus of the hospital means “campus” as defined at § 413.65(a)(2) of this chapter.

Procedure room has the meaning set forth at § 411.362(a).

(b) *CMS consideration of requests for an exception from the prohibition on facility expansion.* (1) CMS will not consider a request for an exception from the prohibition on facility expansion from a hospital that is not eligible to request the exception.

(2) A hospital that meets the criteria for an applicable hospital or a high Medicaid facility is eligible to request an exception from the prohibition on facility expansion for consideration by CMS, provided that—

- (i) CMS has not previously approved a request for an exception from the prohibition on facility expansion that would allow the hospital's number of operating rooms, procedure rooms, and beds for which the hospital is licensed to reach 200 percent of the hospital's baseline number of operating rooms, procedure rooms, and beds if the full expansion is utilized; and
 - (ii) It has been at least 2 calendar years from the date of the most recent decision by CMS approving or denying the hospital's most recent request for an exception from the prohibition on facility expansion.
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(c) *Criteria for an applicable hospital.* An applicable hospital is a hospital that meets the following criteria:

(1) *Population increase.* The hospital is located in a county that has a percentage increase in population that is at least 150 percent of the percentage increase in population of the State in which the hospital is located during the most recent 5-year period for which data are available as of the date that the hospital submits its request. To calculate State and county population growth, a hospital must use Bureau of the Census estimates.

(2) *Medicaid inpatient admissions.* The hospital has an annual percent of total inpatient admissions under Medicaid that is equal to or greater than the average percent with respect to such admissions for all hospitals (including the requesting hospital) that have Medicare participation agreements with CMS and are located in the county in which the hospital is located during the most recent 12-month period for which data are available as of the date that the hospital submits its request. For purposes of this paragraph (c)(2), the most recent 12-month period for which data are available means the most recent 12-month period for which the data source used contains all data from the requesting hospital and each other hospital that has a Medicare participation agreement with CMS and is located in the county in which the requesting hospital is located.

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