

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5713
OFFERED BY MR. BRADY OF TEXAS**

Strike all after the enacting clause and insert the following:

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 providers or suppliers within a temporary moratorium area.

1 **TITLE I—MEDICARE PART A**
2 **PROVISIONS**

3 **SEC. 101. EXTENSION OF CERTAIN LTCH MEDICARE PAY-**
4 **MENT RULES.**

5 (a) 25-PERCENT PATIENT THRESHOLD PAYMENT
6 ADJUSTMENT.—Section 114(c)(1)(A) of the Medicare,
7 Medicaid, and SCHIP Extension Act of 2007 (42 U.S.C.
8 1395ww note), as amended by section 4302(a) of division
9 B of the American Recovery and Reinvestment Act (Public
10 Law 111–5), sections 3106(a) and 10312(a) of Public
11 Law 111–148 and section 1206(b)(1)(B) of the Pathway
12 for SGR Reform Act of 2013 (division B of Public Law
13 113–67), is amended by striking “for a 9-year period” and
14 inserting “through June 30, 2016, and for discharges oc-
15 curring on or after October 1, 2016, and before July 1,
16 2017,”.

17 (b) PAYMENT FOR HOSPITALS-WITHIN-HOSPITALS.—
18 Section 114(c)(2) of the Medicare, Medicaid, and SCHIP
19 Extension Act of 2007 (42 U.S.C. 1395ww note), as
20 amended by section 4302(a) of division B of the American
21 Recovery and Reinvestment Act (Public Law 111–5), sec-
22 tions 3106(a) and 10312(a) of Public Law 111–148, and
23 section 1206(b)(1)(A) of the Pathway for SGR Reform
24 Act of 2013 (division B of Public Law 113–67), is amend-
25 ed—

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

3 (2) in subparagraph (B)—

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

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

8 (3) in subparagraph (C), by striking “for a 9-
9 year period” and inserting “through June 30, 2016,
10 and for discharges occurring on or after October 1,
11 2016, and before July 1, 2017”.

12 **SEC. 102. APPLICATION OF RULES ON THE CALCULATION**
13 **OF HOSPITAL LENGTH OF STAY TO ALL**
14 **LTCHS.**

15 (a) IN GENERAL.—Section 1206(a)(3) of the Path-
16 way for SGR Reform Act of 2013 (division B of Public
17 Law 113–67; 42 U.S.C. 1395ww note) is amended—

18 (1) by striking subparagraph (B);

19 (2) by striking “SITE NEUTRAL BASIS.—” and
20 all that follows through “For discharges occurring”
21 and inserting “SITE NEUTRAL BASIS.—For dis-
22 charges occurring”;

23 (3) by striking “subject to subparagraph (B),”;
24 and

1 (4) by redesignating clauses (i) and (ii) as sub-
2 paragraphs (A) and (B), respectively, and moving
3 each of such subparagraphs (as so redesignated) 2
4 ems to the left.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 subsection (a) shall be effective as if included in the enact-
7 ment of section 1206(a)(3) of the Pathway for SGR Re-
8 form Act of 2013 (division B of Public Law 113–67; 42
9 U.S.C. 1395ww note).

10 **SEC. 103. CHANGE IN MEDICARE CLASSIFICATION FOR**
11 **CERTAIN HOSPITALS.**

12 (a) **IN GENERAL.**—Subsection (d)(1)(B) of section
13 1886 of the Social Security Act (42 U.S.C. 1395ww) is
14 amended—

15 (1) in clause (iv)—

16 (A) in subclause (I), by striking “or” at
17 the end;

18 (B) in subclause (II)—

19 (i) by striking “, or” at the end and
20 inserting a semicolon; and

21 (ii) by redesignating such subclause as
22 clause (vi) and by moving it to immediately
23 follow clause (v); and

1 (iii) in clause (v), by striking the
2 semicolon at the end and inserting “, or”;
3 and
4 (C) by striking “(IV)(I) a hospital” and in-
5 serting “(IV) a hospital”.

6 (b) CONFORMING PAYMENT REFERENCES.—The sec-
7 ond sentence of subsection (d)(1)(B) of such section is
8 amended—

9 (1) by inserting “(as in effect as of such date)”
10 after “clause (iv)”;

11 (2) by inserting “(or, in the case of a hospital
12 described in clause (iv)(II), as so in effect, shall be
13 classified under clause (vi) on and after the effective
14 date of such clause (vi) and for cost reporting peri-
15 ods beginning on or after January 1, 2015, shall not
16 be subject to subsection (m) as of the date of such
17 classification)” after “so classified”.

18 (c) APPLICATION.—

19 (1) IN GENERAL.—For cost reporting periods
20 beginning on or after January 1, 2015, in the case
21 of an applicable hospital (as defined in paragraph
22 (3)), the following shall apply:

23 (A) Payment for inpatient operating costs
24 shall be made on a reasonable cost basis in the
25 manner provided in section 412.526(c)(3) of

1 title 42, Code of Federal Regulations (as in ef-
2 fect on January 1, 2015) and in any subse-
3 quent modifications.

4 (B) Payment for capital costs shall be
5 made in the manner provided by section
6 412.526(c)(4) of title 42, Code of Federal Reg-
7 ulations (as in effect on such date).

8 (C) Claims for payment for Medicare bene-
9 ficiaries who are discharged on or after January
10 1, 2017, shall be processed as claims which are
11 paid on a reasonable cost basis as described in
12 section 412.526(c) of title 42, Code of Federal
13 Regulations (as in effect on such date).

14 (2) APPLICABLE HOSPITAL DEFINED.—In this
15 subsection, the term “applicable hospital” means a
16 hospital that is classified under clause (iv)(II) of sec-
17 tion 1886(d)(1)(B) of the Social Security Act (42
18 U.S.C. 1395ww(d)(1)(B)) on the day before the date
19 of the enactment of this Act and which is classified
20 under clause (vi) of such section, as redesignated
21 and moved by subsection (a), on or after such date
22 of enactment.

23 (d) CONFORMING TECHNICAL AMENDMENT.—
24 Clauses (i) and (ii) of section 1886(m)(5)(F) and section
25 1899B(a)(2)(A)(iv) of the Social Security Act (42 U.S.C.

1 1395ww(m)(5)(F) and 42 U.S.C. 1395lll(a)(2)(A)(iv)) are
2 each amended by striking “1886(d)(1)(B)(iv)(II)” and in-
3 serting “1886(d)(1)(B)(vi)”.

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

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

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

12 (2) by adding at the end the following new sub-
13 paragraph:

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

23 “(i) NOT-FOR-PROFIT.—The long-
24 term care hospital was a not-for-profit

1 long-term care hospital on June 1, 2014,
2 as determined by cost report data.

3 “(ii) PRIMARILY PROVIDING TREAT-
4 MENT FOR CATASTROPHIC SPINAL CORD
5 OR ACQUIRED BRAIN INJURIES OR OTHER
6 PARALYZING NEUROMUSCULAR CONDI-
7 TIONS.—Of the discharges in calendar year
8 2013 from the long-term care hospital for
9 which payment was made under this sec-
10 tion, at least 50 percent were classified
11 under MS–LTCH–DRGs 28, 29, 52, 57,
12 551, 573, and 963.

13 “(iii) SIGNIFICANT OUT-OF-STATE AD-
14 MISSIONS.—

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

1 mitted by the hospital to the Sec-
2 retary as the Secretary may require.

3 “(II) IMPLEMENTATION.—Not-
4 withstanding any other provision of
5 law, the Secretary may implement
6 subclause (I) by program instruction
7 or otherwise.

8 “(III) NON-APPLICATION OF PA-
9 PERWORK REDUCTION ACT.—Chapter
10 35 of title 44, United States Code,
11 shall not apply to data collected under
12 this clause.”.

13 (b) STUDY AND REPORT ON THE STATUS AND VIA-
14 BILITY OF CERTAIN SPINAL CORD SPECIALTY LONG-
15 TERM CARE HOSPITALS.—

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

22 (A) The impact on such hospitals of the
23 classification and facility licensure by State
24 agencies of such hospitals.

1 (B) The Medicare payment rates for such
2 hospitals.

3 (C) Data on the number and health care
4 needs of Medicare beneficiaries who have been
5 diagnosed with catastrophic spinal cord or ac-
6 quired brain injuries or other paralyzing neuro-
7 muscular conditions (as described within the
8 discharge classifications specified in clause (ii)
9 of such section) who are receiving services from
10 such hospitals.

11 (2) REPORT.—Not later than October 1, 2018,
12 the Comptroller General shall submit to Congress a
13 report on the study conducted under paragraph (1),
14 including recommendations for such legislation and
15 administrative action as the Comptroller General de-
16 termines appropriate.

17 **SEC. 105. TEMPORARY EXTENSION TO THE APPLICATION**
18 **OF THE MEDICARE LTCH SITE NEUTRAL PRO-**
19 **VISIONS FOR CERTAIN DISCHARGES WITH SE-**
20 **VERE WOUNDS.**

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

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

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

5 (3) by adding at the end the following new sub-
6 paragraph:

7 “(G) ADDITIONAL TEMPORARY EXCEPTION
8 FOR CERTAIN SEVERE WOUND DISCHARGES
9 FROM CERTAIN LONG-TERM CARE HOSPITALS.—

10 “(i) IN GENERAL.—For a discharge
11 occurring in a cost reporting period begin-
12 ning during fiscal year 2018, subpara-
13 graph (A)(i) shall not apply (and payment
14 shall be made to a long-term care hospital
15 without regard to this paragraph) if such
16 discharge—

17 “(I) is from a long-term care
18 hospital identified by the last sentence
19 of subsection (d)(1)(B);

20 “(II) is classified under MS-
21 LTCH-DRG 602, 603, 539, or 540;
22 and

23 “(III) is with respect to an indi-
24 vidual treated by a long-term care
25 hospital for a severe wound.

1 “(ii) SEVERE WOUND DEFINED.—In
2 this subparagraph, the term ‘severe wound’
3 means a wound which is a stage 3 wound,
4 stage 4 wound, unstageable wound, non-
5 healing surgical wound, or fistula as identi-
6 fied in the claim from the long-term care
7 hospital.

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

14 (c) STUDY AND REPORT TO CONGRESS.—

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

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

3 (B) the potential impact that section
4 1886(m)(6)(A)(i) of such Act (42 U.S.C.
5 1395ww(m)(6)(A)(i)) will have on the access,
6 quality, and cost of care for such individuals;
7 and

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

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

16 **TITLE II—OTHER PROVISIONS**

17 **SEC. 201. NO PAYMENT FOR ITEMS AND SERVICES FUR-** 18 **NISHED BY NEWLY ENROLLED PROVIDERS** 19 **OR SUPPLIERS WITHIN A TEMPORARY MORA-** 20 **TORIUM AREA.**

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

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

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

3 “(C) NONPAYMENT.—

4 “(i) IN GENERAL.—No payment may
5 be made under this title or under a pro-
6 gram described in subparagraph (A) with
7 respect to an item or service described in
8 clause (ii) furnished on or after October 1,
9 2017.

10 “(ii) ITEM OR SERVICE DESCRIBED.—
11 An item or service described in this clause
12 is an item or service furnished—

13 “(I) within a geographic area
14 with respect to which a temporary
15 moratorium imposed under subpara-
16 graph (A) is in effect; and

17 “(II) by a provider of services or
18 supplier that meets the requirements
19 of clause (iii).

20 “(iii) REQUIREMENTS.—For purposes
21 of clause (ii), the requirements of this
22 clause are that a provider of services or
23 supplier—

1 “(I) enrolls under this title on or
2 after the effective date of such tem-
3 porary moratorium; and

4 “(II) is within a category of pro-
5 viders of services and suppliers (as de-
6 scribed in subparagraph (A)) subject
7 to such temporary moratorium.

8 “(iv) PROHIBITION ON CHARGES FOR
9 SPECIFIED ITEMS OR SERVICES.—In no
10 case shall a provider of services or supplier
11 described in clause (ii)(II) charge an indi-
12 vidual or other person for an item or serv-
13 ice described in clause (ii) furnished to an
14 individual entitled to benefits under part A
15 or enrolled under part B or an individual
16 under a program specified in subparagraph
17 (A).”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) MEDICAID.—

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

23 (i) in subparagraph (A), by striking
24 the comma at the end and inserting a
25 semicolon;

1 (ii) in subparagraph (B), by striking

2 “or” at the end; and

3 (iii) by adding at the end the fol-

4 lowing new subparagraph:

5 “(D) subject to section 1902(kk)(4)(A)(ii)(II),
6 within a geographic area that is subject to a morato-
7 rium imposed under section 1866(j)(7) by a provider
8 or supplier that meets the requirements specified in
9 subparagraph (C)(iii) of such section, during the pe-
10 riod of such moratorium; or”.

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

15 “(ii) EXCEPTIONS.—

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

24 “(II) FFP AVAILABLE.—Not-
25 withstanding section 1903(i)(2)(D),

1 payment may be made to a State
2 under this title with respect to
3 amounts expended for items and serv-
4 ices described in such section if the
5 Secretary, in consultation with the
6 State agency administering the State
7 plan under this title (or a waiver of
8 the plan), determines that denying
9 payment to the State pursuant to
10 such section would adversely impact
11 beneficiaries' access to medical assist-
12 ance. ”.

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

19 “(iii) LIMITATION ON CHARGES TO
20 BENEFICIARIES.—The State prohibits, dur-
21 ing the period of such a moratorium, a
22 provider meeting the requirements speci-
23 fied in subparagraph (C)(iii) of section
24 1866(j)(7) from charging an individual or
25 other person eligible to receive medical as-

1 sistance under the State plan under this
2 title (or a waiver of the plan) for an item
3 or service described in section
4 1903(i)(2)(D) furnished to such an indi-
5 vidual.”.

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

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

11 (i) in paragraph (1)(A)—

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

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

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

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

23 (B) SECTION 1902(KK).—Section 1902(kk)
24 of such Act (42 U.S.C. 1396a(kk)) is amend-
25 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 1866(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)”.

