

CMS ISSUES NEW GUIDANCE LETTER FOR STATE DIRECTED PAYMENTS

On February 2, 2026, the Centers for Medicare & Medicaid Services ("CMS") released a new **guidance letter** ("February 2 Letter") regarding state directed payments ("SDPs") as governed by Section 71116 of Public Law 119-21 (which CMS refers to as the "Working Families Tax Cuts" or "WFTC legislation"). Per CMS, its previous September 9, 2025, guidance letter ("September 9 Letter") has been rescinded.

The February 2 Letter largely repeats everything in the September 9 Letter. For example, the preprint-related criteria to qualify for the temporary grandfathering period for total payment rates above Medicare levels for certain services^[1] remain unchanged from the September 9 Letter, including:

- i. SDPs (other than for rural hospitals) for which written prior approval was made by CMS before May 1, 2025;
- ii. SDPs (other than for rural hospitals) for which a "good faith effort" to receive CMS approval was made before May 1, 2025;
- iii. SDPs for rural hospitals for which written prior approval was made by CMS before July 4, 2025;
- iv. SDPs for rural hospitals for which a "good faith effort" to receive CMS approval was made before July 4, 2025; and
- v. SDPs for which a "completed preprint" was submitted to CMS prior to July 4, 2025.

Likewise, the February 2 Letter mirrors the September 9 Letter's guidance that "completed preprint" means a fully completed preprint with all information provided where indicated in the appropriate sections of the preprint and the addendum tables. Moreover, as with the September 9 Letter, the February 2 Letter states that "good faith effort" is synonymous with "completed preprint."

"WITHIN 180 DAYS" OF JULY 4, 2025

The biggest difference between the two letters concerns the grandfathering of some SDPs that involve rating periods "within 180 days" of July 4, 2025. In the September 9 Letter, CMS interpreted "within 180 days" as 180 *calendar* days before and after July 4, 2025. In the February 2 Letter, CMS interprets "within 180 days" to mean 180 *business* days before and after July 4, 2025. As a result, for those SDPs that may be eligible for grandfathering because they apply to rating periods "within 180 days" of July 4, 2025, the subject rating period may include any days from October 11, 2024, through July 3, 2025, or July 7, 2025, through March 27, 2026. In contrast, under the previous definition of "within 180 days," the grandfathering period would have applied to eligible SDPs in rating periods that included only days from January 5, 2025, through July 3, 2025, or July 5, 2025, through December 31, 2025.

ANTI-CIRCUMVENTION INSTRUCTION

The other material difference between the letters is the February 2 Letter's addition of an explicit "anti-circumvention" instruction. The Letter explicitly states that states cannot revise SDP preprints in an effort to circumvent the grandfathering criteria so as to gain grandfathered status. Revising a rating period originally stated in a pending preprint was given as an example of "circumvention." The September 9 Letter did not include explicit anti-circumvention language.

A close review of this instruction, especially when read in concert with the remainder of the February 2 Letter, does not lead to the conclusion, with regard to an SDP for which a pending preprint was submitted to CMS prior to July 4, 2025, that CMS is taking the position that *any* change made to the pending preprint (including a change requested by CMS) would *automatically* prevent the preprint from being considered a "completed preprint" for grandfathering purposes. CMS had plenty of opportunities in both the September 9 Letter and the February 2 Letter to plainly state that position—but it did not do so. Instead, as noted earlier, CMS (like it did in the September 9 Letter) specifies that "completed preprint" means a "preprint completed in full" with "all information.. provided only in the fillable sections of the preprint and the addendum tables." Noticeably absent from this description is any prohibition against revising a preprint that is pending with CMS.^[2]

None of this is to say that material revisions to a pending preprint can never cause the preprint to lose "completed preprint" status. However, based on the limited guidance that CMS has provided to date on this specific issue, it is reasonable to conclude that the February 2 Letter's admonition against "effort[s] to circumvent the grandfathering criteria" refers only to efforts initiated by States (which are

reasonably understood to serve no purpose other than qualifying the subject SDP for grandfathering status) and not to revisions to pending preprints requested by CMS.

PRACTICAL TAKEAWAYS

The February 2 Letter is now the operative guidance on the WFTC legislation, while reaffirming that SDPs for inpatient/outpatient hospital, nursing facility and certain academic medical center practitioner services are subject to Medicare total payment rate limits for rating periods beginning on/after July 4, 2025, unless temporary grandfathering applies. The most consequential change brought about by the February 2 Letter is CMS's revised interpretation of the "within 180 days" grandfathering criterion as meaning 180 *business* days (rather than *calendar* days), which expands the actual days included in rating periods and arrangements that could qualify for grandfathering. Also important, the February 2 Letter instructs that states may not revise SDP preprints to circumvent the grandfathering criteria in order to gain grandfathered status, explicitly noting, as an example, that a state cannot revise the rating period of a pending preprint to try to qualify for grandfathering (however, there is reason to believe that this prohibition does not apply to revisions to pending preprints requested by CMS).

If you have any questions or would like additional information, please contact:

- **Tim Kennedy** at (317) 977-1436 or tkennedy@hallrender.com;
- **Camilla Moreno Jimenez** at (317) 429-3679 or cjimenez@hallrender.com; or
- Your primary Hall Render contact.

Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside of an attorney-client relationship—answer specific questions that would be legal advice.

[references]

[1] Those services consist of inpatient hospital services, outpatient hospital services, nursing facility services, and qualified practitioner services at an academic medical center.

[2] The examples provided in the "Next Steps" section of the February 2 Letter (which are almost identical to the examples used in the "Next Steps" section of the September 9 Letter) do not describe scenarios where an SDP was denied grandfathered status due to changes made to the pending preprint.

[/references]