

Insights

15 Things to Know About the Proposed Changes to Off-Campus Provider-Based Department Reimbursement

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The Balanced Budget Act of 2015 ("BBA") passed on November 2, 2015 provides that, effective January 1, 2017, "applicable items and services" (other than items and services furnished by a dedicated emergency department) furnished by an off-campus outpatient department of a provider ("Off-Campus PBD") established on or after November 2, 2015, will not be eligible for payment under the outpatient prospective payment system ("OPPS"), and will instead be paid "under the applicable payment system" under Medicare Part B ("Site Neutral Provision").

On July 14, 2016, CMS is scheduled to publish the OPPS proposed rule ("Proposed Rule"), implementing the Site Neutral Provision. The following are fifteen (15) things you should know about the Proposed Rule:

1. Items and services furnished by a dedicated emergency department, including both emergency and nonemergency services, are not subject to the Site Neutral Provision, and will continue to be reimbursed under the OPPS.
2. PBDs that are located on campus are not subject to the Site Neutral Provision and can continue to bill and be reimbursed under the OPPS.
3. Off-Campus PBDs that are located within 250 yards of a remote location are not subject to the Site Neutral Provision, and can continue to bill and be reimbursed under the OPPS.
4. CMS suggests that hospitals use surveyor reports or other appropriate documentation to ensure that their Off-Campus PBDs are within 250 yards (straight-line) from any point of a remote location for purposes of being exempt from the Site Neutral Provision.
5. The Site Neutral Provision will not apply to items or services furnished by an Off-Campus PBD that submitted a bill for a covered outpatient department service prior to November 2, 2015, are furnished at the same location that the department was furnishing such services as of November 1, 2015, and are in the same clinical family of services as the services that the department furnished prior to November 2, 2015 ("Excepted Off-Campus PBD").
6. An Excepted Off-Campus PBD that moves or relocates from the physical address that was listed on the provider's hospital enrollment form as of November 1, 2015 will become subject to the Site Neutral Provision upon such move or relocation.
7. CMS is considering whether to put into place a clearly defined, limited relocation exception process for hospitals struck by a natural disaster or experiencing extraordinary circumstances.
8. CMS also states that a "unit number" is considered part of the address, so an Excepted Off-Campus PBD cannot purchase and expand into other units and remain excepted.
9. Excepted Off-Campus PBD status may be transferred to new ownership only if ownership of the main provider is also transferred and the Medicare provider agreement is accepted by the new owner.

- 10.** An Excepted Off-Campus PBD may only seek payment under the OPPS for the provision of items and services it was furnishing prior to November 2, 2015.
- 11.** Items and services that are not part of a clinical family of services furnished and billed by the Excepted Off-Campus PBD prior to November 2, 2015 would be subject to Site Neutral Provision, and not payable under the OPPS.
- 12.** Clinical Families of Services, include the following 19 Families:
- a. Advanced Imaging
 - b. Airway Endoscopy
 - c. Blood Product Exchange
 - d. Cardiac/Pulmonary Rehabilitation
 - e. Clinical Oncology
 - f. Diagnostic Tests
 - g. Ear, Nose, Throat (ENT)
 - h. General Surgery
 - i. Gastrointestinal (GI)
 - j. Gynecology
 - k. Minor Imaging
 - l. Musculoskeletal Surgery
 - m. Nervous System Procedures
 - n. Ophthalmology
 - o. Pathology
 - p. Radiation Oncology
 - q. Urology
 - r. Vascular/Endovascular/Cardiovascular
 - s. Visits and Related Services.
- 13.** CMS has not finalized the payment methodology for Off-Campus PBDs that do not meet an exception to the Site Neutral Provision.
- 14.** CMS provides a temporary, 1-year payment policy for paying for non-excepted items and services furnished by Off-Campus PBDs. For CY 2017, CMS proposes that the physician or practitioner bill and be paid for items and services in the Off-Campus PBD under the Medicare Physician Fee Schedule (“MPFS”) at the nonfacility rate instead of the facility rate.
- 15.** CMS suggests that Off-Campus PBDs may enroll in another provider/supplier type, such as an ASC or physician group practice, so the enrolled provider/supplier can then bill and be paid under the payment system for that type of Medicare enrolled entity.

For more information on this Proposed Rule and how it impacts your facility, or for assistance in developing a strategy for developing new Off-Campus PBDs, contact Meghan Linvill McNab at mmcnab@kdlegal.com or Brian Heaton at bheaton@kdlegal.com.