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Treatment of Off-Campus Outpatient Departments of a Provider

Fact Sheet and Policy Position | November 2015

On November 2, 2015, President Obama signed into law the Bipartisan Budget Act (H.R. 1314). The bill includes a provision that will eliminate Medicare outpatient payment for new off-campus hospital facilities.

The Issue

Under Section 603 of the bill, all new off-campus ambulatory facilities developed or acquired by a hospital will no longer be reimbursed under the outpatient prospective payment system (OPPS). Instead, they will be reimbursed under either the Medicare physician fee schedule (PFS) or ambulatory surgical center prospective payment system (ASC PPS), as applicable.

The purpose of this provision is to make Medicare reimbursement for ambulatory facilities "site neutral," effectively banning OPPS reimbursement for many new off-campus provider-based departments. The bill will:

- Permanently grandfather (i.e., permanently permit payment on an OPPS basis) off-campus ambulatory sites that were in operation and billing Medicare under OPPS prior to the November 2, 2015 enactment of the bill
- Permit payment on an OPPS basis only through December 31, 2016 for any new off-campus ambulatory site developed or acquired by a hospital that was not in operation and billing Medicare under OPPS prior to November 2, 2015
- Deny OPPS reimbursement for any new off-campus ambulatory site put into operation by a hospital on or after January 1, 2017 (with certain very limited exceptions)
- Permit OPPS billing for new off-campus departments that are "dedicated emergency departments"

The Congressional Budget Office (CBO) estimated that this provision will save $9.3 billion over 10 years by reducing Medicare reimbursements for ambulatory services in hospital outpatient settings. Section 603 took effect immediately upon enactment on November 2, 2015.

As outlined below, Section 603 will have significant unintended collateral consequences that should be addressed by corrective legislation.

- **The bill will undermine the ability of hospitals to develop or integrate lower-cost ambulatory facilities at patient-convenient locations to increase accessibility and reduce cost of care**
  - The cost structures of hospitals, including for their ambulatory care facilities are different than for physician offices and ASCs. Hospitals have greater investment in information technology, quality and safety systems, and other human and technology resources. Physician fee schedule and ASC rates are inadequate to cover those costs.
  - Hospitals will be at a competitive disadvantage to physicians and ASCs.
  - This will undermine hospital efforts to integrate and coordinate care between ambulatory, acute, and post-acute care sites at the very moment that public policy is trying to promote accountable care, the Triple Aim, and population health management.
- **The bill will adversely affect rural and underserved communities**
  - Without adequate Medicare reimbursement for off-campus ambulatory sites, hospitals will not be able to afford to develop such sites in rural and underserved communities.
  - Those communities have been left behind by other health care stakeholders because of their unattractive economic profiles.
- **The bill will kill many off-campus projects that are in the pipeline, in which hospitals have invested substantial resources, and that would benefit the communities they serve**
  - Off-campus ambulatory care facilities cover a broad spectrum from small (with a few offices) to large (with hundreds of offices), and from single specialty to multi-specialty. Some off-campus ambulatory facility developments and transactions have been years in the making. Yet, the bill will only grandfather those that were operational on November 2, 2015, regardless of the stage of planning for the projects on that date.
  - This "one size fits all" approach to grandfathering will kill many important projects that are in the pipeline and in which hospitals have invested significant resources.
- **The bill will create an unfair playing field among hospitals**
  - There will be the "haves" that were in operation with off-campus ambulatory facilities before November 2, 2015, and will be permanently grandfathered; and the 'have-nots" who will have no opportunity for OPPS rates for such facilities after January 1, 2017.
  - This will be a permanent competitive disadvantage for the "have nots" and may have locally destabilizing effects. Additionally, some of the "have nots" may be the lower cost hospital providers that did not have the leverage to access capital to construct outpatient facilities as quickly as their better funded competitors.

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For More Information

If your hospital will be affected by this change in law, please contact us to discuss how Foley can assist with your response to federal policy-makers.

MICHAEL L. BLAU
Partner, Health Care Industry Team
617.342.4040 | mblau@foley.com

THEODORE H. BORNSTEIN
Partner, Government & Public Policy Practice
202.945.6188 | tbornstein@foley.com

DENNIS A. CARDOZA
Public Affairs Director and former U.S. Congressman
202.295.4015 | dcardoza@foley.com

SCOTT L. KLUG
Public Affairs Director and former U.S. Congressman
608.258.4762 | sklug@foley.com

LAWRENCE W. VERNAGLIA
Partner and Health Care Industry Team Chair
617.342.4079 | lvernaglia@foley.com

JENNIFER F. WALSH
Public Affairs Director
202.295.4762 | jwalsh@foley.com