

CONGRESS PASSES TWO-YEAR BUDGET AGREEMENT

Friday, October 30, 2015

The Senate early this morning passed legislation to raise the nation's debt limit and set spending targets for the federal budget for the next two fiscal years (the House passed the bill Wednesday). The bill, which includes site-neutral payment changes for new provider-based hospital outpatient departments and a one-year extension of the Medicare sequester, will be signed by President Obama as quickly as possible to avoid defaulting on the nation's debt.

Details of the site-neutral provision contained in the budget agreement, and what it means for hospitals, are outlined in the attached Frequently Asked Questions document. If you have additional questions, please contact Roslyne Schulman, AHA director of policy, at rschulman@aha.org.

The AHA is deeply disappointed that the bill opens the door to additional payment restrictions on provider-based hospital outpatient departments. We worked to provide some flexibility and limits on the site-neutral provision but remain concerned that the final outcome could restrict patients' care options. We will work with Congress to make changes to the site-neutral provision to address the serious concerns of the field.



**American Hospital
Association®**

Frequently Asked Questions

SEC. 603. Treatment of New Off-Campus Outpatient Departments of a Provider in the Bipartisan Budget Act of 2015

Summary

The provisions in Section 603 would enact site-neutral payment reductions for Medicare services that are furnished in new off-campus provider-based (PB) hospital outpatient departments (HOPDs) that are not dedicated emergency departments. The bill defines off-campus PB HOPDs as departments that are not on the main campus of a hospital and are located more than 250 yards from the main campus. The section defines a “new” PB HOPD as an entity that started billing for Medicare outpatient services on or after the Act’s date of enactment, but is not a dedicated emergency department. New off-campus PB HOPDs would not be eligible for reimbursements from the Centers for Medicare & Medicaid Services’ (CMS) outpatient prospective payment system (OPPS) beginning Jan. 1, 2017. Instead, as of that date, these new off-campus PB HOPDs would be eligible for reimbursements from other Medicare Part B payment systems, including the Medicare physician fee schedule (PFS), the ambulatory surgery center (ASC) payment system, or the clinical laboratory fee schedule (CLFS), as appropriate.

Questions and Answers

1. What is the effective date of the bill’s provisions?

The bill would deem as “new” those off-campus PB HOPDs that started billing Medicare under the OPPS on or after the bill’s date of enactment, but are not dedicated emergency departments. For these new off-campus PB HOPDs, the site-neutral payment reductions would begin to apply to the items and services they furnish on or after Jan. 1, 2017.

For example, if you acquire or build a new off-campus PB HOPD and begin billing Medicare for this entity’s services on June 30, 2016 (after the bill’s enactment date), this entity would continue to receive the OPPS payment from June 30 – Dec. 31, 2016. Beginning Jan. 1, 2017, the reduced rate would apply.

- 2. I understand that some off-campus PB HOPDs would be grandfathered in, i.e., not subject to the site-neutral payments. Which off-campus PB HOPDs would be grandfathered in?**

Off-campus PB HOPDs that are a department of the hospital and were billing under the OPSS before the bill's date of enactment would be grandfathered in. Specifically, these departments would not be subject to the site-neutral payment reductions and could continue to bill Medicare and receive payments under the OPSS beyond Jan. 1, 2017.

In addition, the payment reductions under the bill would not apply to items and services furnished by an off-campus PB HOPD that is a dedicated emergency department, even if does not meet the grandfathering test (see Question 7 below for the definition).

- 3. Would the site-neutral payment reductions apply if my hospital or health system employs the physicians providing service in the new off-campus PB HOPD?**

Yes (unless the off-campus PB HOPD is a dedicated emergency department). Whether or not these new departments employ their physicians does not affect whether or not they experience the payment reductions.

- 4. Would the site-neutral payment reductions apply if my hospital or health system acquires another entity's existing off-campus PB HOPD on or after the Act's date of enactment?**

While the language in the bill is not clearly written and, therefore, CMS's interpretation through rulemaking will be necessary, the AHA believes that the answer to this question is "no." We do not believe that the site-neutral payment reductions would apply to services that are furnished in a newly acquired off-campus PB HOPD that has historically been billing Medicare under the OPSS prior to being acquired by another hospital or health system, even if the acquisition occurs after the bill's date of enactment.

- 5. Would the site-neutral payment reductions apply if my hospital or health system is building a new off-campus PB HOPD?**

The AHA believes that the site-neutral payment reductions would apply to newly constructed off-campus PB HOPDs that started billing Medicare under the OPSS on or after the date of enactment of the bill, unless, as described above, the newly built entity is a dedicated emergency department.

6. Would the site-neutral payment reductions apply if my hospital or health system owned an existing off-campus PB HOPD and tore it down and rebuilt it on the same site on or after the date the bill was enacted?

The language in the bill is not clearly written and, therefore, the answer to this question would have to be determined by CMS through their rulemaking process.

7. I understand that the site-neutral payment reductions would not apply to items and services that are furnished in a “dedicated emergency department.” How does the law define a dedicated emergency department?

The bill references an existing Medicare definition. Therefore, a “dedicated emergency department” means “any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

- (1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;
- (2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or
- (3) During the calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during that calendar year, it provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.”

8. Would the site-neutral payment reductions apply to non-emergency department services (such as infusion services) that are furnished in an off-campus PB HOPD that contains a dedicated emergency department?

While the language in the bill is not clearly written and, therefore, CMS’s interpretation through rulemaking will be necessary, a plausible interpretation of the legislation is that, as long as the off-campus PB HOPD is a “dedicated emergency department,” none of the items and services furnished in this entity would be subject to the site-neutral payment reductions. However, this is also something that will have to be dealt with in regulation.

9. Would this policy affect 340B eligibility for new off-campus PB HOPDs?

Extremely unlikely, since these sites would still be off-campus PB HOPDs, albeit ones receiving a reduced payment amount. They would still be able to

be listed on a reimbursable line of the hospital's cost report, which HRSA currently requires as a pre-condition for 340B eligibility.

10. Would the site-neutral payment reductions apply to a new HOPD that was acquired or built on a site that is located on my hospital's campus?

No. As long as the HOPD is located on the hospital's campus, as defined in Medicare regulation, the bill would not apply to this HOPD. CMS defines campus to mean "the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by the CMS regional office, to be part of the provider's campus." Further, the provisions of the bill also would not apply to a newly acquired or built HOPD located on the campus (as defined above) of a remote location of a hospital facility.

11. What rates would my hospital be paid for items and services furnished in a new off-campus PB HOPD on or after Jan. 1, 2017?

Starting Jan. 1, 2017, such items and services would no longer be eligible for reimbursements at the Medicare OPPS rates. Instead, reimbursement would be made under other Medicare Part B payment systems, such as the Medicare physician fees schedule (PFS), the ambulatory surgery center (ASC) payment system, or the clinical laboratory fee schedule (CLFS). Due to the unclear language in the bill, we are not certain of the exact rate that hospitals will be eligible to receive. CMS rulemaking will be necessary to fully flesh out which rates would apply.

12. My hospital recently acquired a new off-campus rural health clinic (RHC). Would the bill's provisions apply to the items and services furnished in this RHC?

No, because the bill uses CMS's definition of "department of a provider" (which excludes RHCs and federally-qualified health centers (FQHCs)), the bill would not apply to services furnished in an off-campus provider-based RHC or FQHC. They would continue to be paid the same applicable RHC/FQHC rate they are today.