



American Hospital
Association®

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December 14, 2017

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW, Room 445-G
Washington, DC 20201

Dear Ms. Verma:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) requests your assistance with a provision included in the 21st Century Cures Act. **Specifically, we urge you to issue an instruction to the Medicare Administrative Contractors (MACs) directing them to review hospital applications for the mid-build exception to Section 603 of the Bipartisan Budget Act of 2015 (BiBA) and also to notify hospitals whether or not they have been granted the exception.** As these exceptions become effective Jan. 1, 2018, we request your response as expeditiously as possible.

Effective Jan. 1, 2017, Section 603 of BiBA precludes Medicare payment under the hospital outpatient prospective payment system (OPPS) for items and services furnished by off-campus provider-based departments (PBDs) that first billed Medicare for services furnished on or after Nov. 2, 2015 (referred to below as “nonexcepted” PBDs). The Centers for Medicare & Medicaid Services (CMS) first implemented this provision by paying nonexcepted PBDs for most services under the physician fee schedule at a rate of 50 percent of the OPPS rate. However, effective Jan. 1, 2018, CMS will pay nonexcepted PBDs at 40 percent of the OPPS rate. Off-campus PBDs that are dedicated emergency departments or that first furnished services billed under the OPPS prior to Nov. 2, 2015 are excepted from Section 603 and continue to be paid under the OPPS.

The 21st Century Cures Act created additional exceptions to Section 603 under which off-campus PBDs that did not bill for services paid under the OPPS prior to Nov. 2, 2015 would be excepted effective Jan. 1, 2018, if they submitted the following materials to their MAC by Feb. 13, 2017:



- An attestation that the off-campus PBD is a department of a provider in accordance with the regulations at 42 CFR 413.65(b)(3);
- The hospital includes the department as part of the hospital on its enrollment form in accordance with the enrollment process under Section 1866(j) of the Social Security Act (the Act); and
- A written certification signed by the hospital's chief executive officer or chief operating officer (or equivalent if such titles are not used) that the department met the "mid-build" requirement (as defined at Section 1833(t)(21)(B)(v) of the Act).

While CMS is not required to notify hospitals of its decision on their application for an exception, the agency is required to audit each application. However, CMS has until Dec. 31, 2018 to complete these audits. **As such, the AHA is very concerned about the risk hospitals will have to take on by assuming that they meet the requirements for the exception until the time their audit occurs. Indeed, for this very reason, several of our members have inquired with their MACs about the status of their application, but to no avail. Since reimbursement under Section 603 results in payment at 40 percent of the OPPS, hospitals are anxious to know whether they meet the requirements for being excepted from Section 603 beginning Jan. 1, 2018. This decision is essential for accurate and sound financial forecasting.**

We understand that CMS has numerous responsibilities with implementing the statute. Yet, hospitals bear many responsibilities as well and are concerned that their inquiries to their MACs and components of CMS's Central Office on this issue have been unsuccessful. We urge CMS to respond immediately.

In our view, CMS can resolve this issue by issuing an instruction to the MACs, directing them to review, by a specific date (e.g., two weeks after receiving the instruction), hospital information submitted by Feb. 13, 2017 and to notify hospitals whether or not they meet the three requirements to receive a mid-build exception. We request that you direct the most appropriate team within CMS to undertake this task at the soonest possible date.

Again, we thank you for your consideration of our comments. Please contact me if you have questions or feel free to have a member of your team contact Roslyne Schulman, director of policy, at rschulman@aha.org or (202) 626-2273.

Sincerely,

/s/

Thomas P. Nickels
Executive Vice President
Government Relations and Public Policy