

Budget Deal Alters Reimbursement to Off-Campus Hospital-Owned Facilities

November 4, 2015

On November 2, 2015, President Obama signed into law H.R. 1314, the Bipartisan Budget Act of 2015 (the "Act"), which significantly changes Medicare reimbursement for off-campus hospital services. The Act, which Congress passed late last week, will alter Medicare reimbursement for new off-campus hospital-owned facilities that have heretofore been treated as "hospital-based." Off-campus facilities for which a hospital was not billing as "hospital-based" as of the date of the enactment of the Act will not be treated as "hospital-based," and the physician or other provider's fee schedule rate, instead of the hospital outpatient rate, will apply.

Prior to the Act, covered out-patient department ("OPD") services included services provided by facilities meeting the complex hospital-based rules, even if the facility was not physically-located on the campus of the hospital. Subject to the grandfather provision discussed below, the Act adds a specific exclusion to the definition of covered OPD services, making services furnished by an off-campus outpatient department of a hospital ineligible. The Act provides that a facility is "off-campus" if it is not within 250 yards of the hospital's main buildings (including for this purpose, a "remote location of a hospital," meaning a separate in-patient campus of the hospital, which is a helpful clarification in an otherwise problematic law). Facilities deemed "off-campus" are ineligible for Medicare reimbursement at the hospital outpatient rate.

The inclusion of a grandfather provision will mitigate some of the Act's impact, as facilities currently treated as "hospital-based" will not be impacted by the change in law. Only facilities that are not billing as "hospital-based" as of the date of enactment will be ineligible for reimbursement at the hospital outpatient rate. It is unclear whether a conveyance of an off-campus grandfathered facility would eliminate the grandfathered status and the ability of the buyer to bill for the services as "hospital-based." The Congressional Budget Office ("CBO") forecasts that the government will reap significant cost savings from the lower rates that will apply; an October 28, 2015 analysis from the CBO projects that the change in reimbursement policy will provide \$9.3 billion in relief by 2025.

For more information, please contact any of the lawyers listed on this alert or the member of the Proskauer Health Care Industry Group with whom you normally consult on these matters.

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