

Wednesday, September 12, 2018

Senate Letter Urging CMS to Protect Grandfathered Facilities from Site-neutral Cuts Needs Signatures

Urge Your Senator to Sign on by Sept. 24

Sens. Rob Portman (R-Ohio) and Debbie Stabenow (D-Mich.) are asking their Senate colleagues to sign on to a letter urging the Centers for Medicare & Medicaid Services (CMS) to withdraw proposals to expand certain site-neutral payment policies to grandfathered off-campus hospital provider-based departments (PBDs).

Section 603 of the Bipartisan Budget Act of 2015 requires that, with the exception of dedicated emergency department (ED) services, services furnished in off-campus PBDs that began billing under the outpatient prospective payment system (OPPS) on or after Nov. 2, 2015, or that cannot meet the 21st Century Cures Act's "mid-build" exception, will no longer be paid under the OPPS, but under another applicable Part B payment system. In the calendar year (CY) 2019 physician fee schedule (PFS) [proposed rule](#), the agency continues to identify the PFS as the applicable payment system for most of these non-excepted services and proposes to set payment for most non-excepted services at 40 percent of the OPPS rate.

In its OPPS [proposed rule](#) for CY 2019, citing "unnecessary" increases in the volume of clinic visits in hospital PBDs, CMS proposes to pay for clinic visits furnished in excepted off-campus PBDs at the same rate they are paid in non-excepted off-campus PBDs. Specifically, CMS proposes to pay for clinic visit (i.e., evaluation and management) services in excepted PBDs at the "PFS-equivalent" payment rate of 40 percent of the OPPS payment amount. Further, the agency would implement this proposal in a non-budget neutral manner, which means that it is estimated to cut hospital payments under the OPPS by \$760 million in CY 2019.

Further, under current site-neutral payment policy, an excepted off-campus PBD may expand the type of services it furnishes and will receive the full OPPS rate for such services. However, in another misguided proposal, CMS expresses concern that this policy incentivizes hospitals to purchase additional physician practices and add those physicians to an existing excepted off-campus PBD, in a manner that the agency believes is inconsistent with the intent of Section 603. As a result, CMS proposes that, if an excepted off-campus PBD begins to furnish a new service from a clinical family for which it did not previously furnish and bill for during a baseline period (generally from Nov. 1, 2014 through Nov. 1, 2015), the new service would no longer be a covered outpatient department service. Instead, it would be a non-excepted service and paid under the PFS at 40 percent of the OPPS amount.

In their [letter to CMS](#), Portman and Stabenow express disappointment with the proposals, saying they are “counter to the intent of Section 603 and will jeopardize access to care” for seniors:

“In passing Section 603, Congress was clear in its intention to grandfather existing facilities, so that only new off-campus sites would have payments reduced, and as noted previously, while we share the goal of reducing out of pocket costs for our seniors, the proposed cuts to both HOPD [evaluation and management] services and to future services from new clinical families threaten seniors’ access to care in their own communities. Therefore, we ask that that CMS ensure these facilities be treated as Congress intended and protected from the proposed cuts. We appreciate your consideration of these concerns.”

Please contact your senators and urge them to co-sign the letter. It is critical that we have a strong show of support in the Senate as we advocate with CMS to withdraw these proposals. The Portman and Stabenow offices are collecting signatures on the letter through Sept. 24.

CMS has misconstrued Congressional intent with its proposals. Under Section 603, Congress clearly intended to preserve the existing outpatient payment rate for these excepted off-campus PBDs in recognition of the critical role they play in their communities. But CMS’s CY 2019 proposals run counter to this and will instead impede access to care for the most vulnerable patients.

See our [factsheet](#) for more details and talking points.