

# Client Alert

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## CMS Releases Final CY 2017 Hospital Outpatient and Ambulatory Surgery Center Payment Rule

Kelly A. Leahy, Partner | kleahy@slk-law.com | 614.628.6815

On November 1, 2016 CMS released its Final Hospital Outpatient Prospective Payment System (“OPPS”)/Ambulatory Surgical Center Payment Rule with Comment Period (“Final Rule”) which, among other things, addresses site-neutral payments for hospital-based outpatient departments (referred to as Provider Based Departments or PBDs). CMS reversed its proposed policy that did not allow for service expansion within a PBD but went forward with a prohibition on relocation, meaning a hospital will be able to expand its PBD services but cannot relocate except in extraordinary circumstances, which CMS indicated will be “rare” and “unusual.” CMS estimates the implementation of the PBD rules will reduce net OPPS payments by \$500 million in CY 2017.

### PBD Service Expansions, Relocations, and Changes of Ownership

- Service Expansion in an Excepted Off-Campus PBD. CMS proposed to limit the items and services that an excepted off-campus PBD could continue to bill under the OPPS beginning January 1, 2017, to those items and services within a clinical family that were furnished and billed as of November 2, 2015. However, in response to public comments on administrative burden and complexity and potential beneficiary access issues, CMS is not finalizing this proposal. CMS will monitor expansion of clinical service lines by off-campus PBDs and continue to consider whether a potential limitation on service line expansion should be adopted in the future.
- Relocation of Excepted Off-Campus PBDs. CMS is finalizing its proposal that items and services must continue to be furnished and billed at the same physical address of the off-campus PBD that was in use as of November 2, 2015. The final relocation policy

includes a notable change from the proposal to allow excepted off-campus PBDs to relocate temporarily or permanently without loss of excepted status due to extraordinary circumstances outside of the hospital’s control, such as natural disasters. Exceptions for extraordinary circumstances will be evaluated and determined by the applicable CMS Regional Office and are expected to be rare and unusual.

- Changes of Ownership of Excepted Off-Campus PBDs. CMS is finalizing its proposal to allow an off-campus PBD to maintain its excepted status if the hospital has a change of ownership and the new owner accepts the existing Medicare provider agreement from the prior owner.
- PBDs Under Construction. As expected CMS did not create an exception for hospitals that had PBDs under construction as of the November 2, 2015 effective date of the Bipartisan Budget Act of 2015 (“BBA ‘15”). BBA ‘15 limited Medicare payment for items or services furnished at an off-campus outpatient department of a hospital unless the location was billing as an outpatient department prior to November 2, 2015. In May, the House Ways and Means Committee approved the Helping Hospitals Improve Patient Care Act of 2016 (H.R. 5273), sponsored by Rep. Patrick Tiberi (R-OH), which would establish exceptions as well as implement other policy and reimbursement changes. The bill passed the Committee and was approved by the House. The exceptions will only be available to hospitals if the bill passes the Senate and is signed by the President. It is currently pending in the Senate Committee on Finance.

### **PBD Payments to Hospitals**

The rule also contains an Interim Final Rule with Comment Period (“IFC”) to establish Medicare Physician Fee Schedule rates for certain items and services furnished by certain off-campus PBDs. Hospitals will generally receive 50% of the OPPS rate (with some exceptions outlined in the IFC). CMS is seeking public comments and will make adjustments as necessary to the payment mechanisms and rates, *which could be effective in CY 2017*. While hospitals may not be happy with the 50% payment rate in the proposed rule, CMS proposed not to pay non-accepted PBDs *at all* for their services in CY 2017. CMS will accept comments to the Final Rule and the IFC until December 31, 2016.

### **Hospital OPPS Payment Update**

For CY 2017 CMS is increasing OPPS rates by 1.65%. This is based on the projected hospital market basket increase of 2.7% minus both a 0.3% adjustment for multi-factor productivity (“MFP”) and a 0.75% adjustment required by law. CMS estimates a 1.7% increase (before taking into account changes in volume and case mix) for hospitals paid under the OPPS in CY 2017.

### **ASC Payment Update**

ASC payments are adjusted based on the Consumer Price Index for all urban consumers and adjusted by a MFP adjustment required by law. For CY 2017 the CPI-U is projected to be 2.2%. Less the 0.3% MFP CMS projects a 1.9% increase for ASCs.

### **Pain Management Dimension in Hospital Value-Based Purchasing (“VBP”) Program**

Beginning in FY 2018 CMS is finalizing its proposal to remove the pain management dimension of Hospital Consumer Assessment of Healthcare Providers and Systems (“HCAHPS”) for purposes of the hospital VBP program. Many providers believe that the pain management questions create pressure on providers to prescribe more opioids in order to achieve higher scores. CMS is developing and field testing alternative questions related to provider communication on pain in order to remove any potential ambiguity in the HCAHPS survey. HCAHPS survey data will continue to be publicly reported under the Hospital Inpatient Quality Reporting Program while CMS is developing alternative pain management questions.

The rule is 1,378 pages long and can be found [here](#). A CMS Fact Sheet can be found [here](#).

If you have questions, please contact Kelly Leahy at (614) 628-6815 or [kleahy@slk-law.com](mailto:k Leahy@slk-law.com).

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