

PUBLICATION

CMS Proposes to Reduce Facility Payment for Non-Excepted Provider-Based Outpatient Department Services by 50 Percent

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CMS recently proposed to reduce the facility fee for non-excepted off-campus provider-based hospital departments (OPBDs) from 50 percent of the Medicare Physician Fee Schedule (MPFS) amount to 25 percent of the MPFS amount. *Comments are due by September 11.*

CMS has been struggling to identify an appropriate payment mechanism for OPBDs since Congress adopted a provision in the Bipartisan Budget Act of 2015 that bars CMS from continuing to pay hospitals for these services using the outpatient prospective payment system (OPPS) rates. Section 603 of the Bipartisan Budget Act of 2015 established new payment rules for OPBDs that had not billed for OPPS services provided as of November 2, 2015. Dedicated emergency departments are exempted from the new payment scheme. Section 603 established that the OPBDs could not be paid under OPPS but instead must be paid "under the applicable payment system," yet did not provide what that payment system was.

In the OPPS rule for calendar year (CY) 2017, CMS announced that it was working to create a new payment system. However, for CY 2017, it would pay for these services by paying the practitioner his or her professional fee and paying the facility 50 percent of the OPPS rate. See our article discussing Section 603 and the CY 2017 rules [here](#).

In the [2018 Medicare Physician Fee Schedule \(PFS\)](#) rule, published in the July 21, 2017 Federal Register, CMS announced its intention to continue to pay practitioners their professional fee but to reduce the facility fee to 25 percent of the OPPS rate. The proposal is based solely on the code-level comparison for the service most commonly billed in the OPBDs under the OPPS – a clinic visit report using HCPCS code G0463.

CMS invites comments on this proposed change to the rule, including, specifically, whether it should adopt a different percentage that reflects a middle ground between the current 50 percent rate and the proposed 25 percent rate.

Baker Donelson Comments:

CMS appears to acknowledge in the preamble discussion that the 50 percent cut in payment rate is significant and may not be justified, given that it is not based on a representative sample of services being provided and does not take into account other factors, such as the specific mix of services furnished by the OPBDs, policies related to packaging of codes under OPPS and payment adjustments like the multiple procedure payment reduction and bundling under the PFS. Providers affected by this proposed reduction in payment should take this opportunity to submit a reasoned comment addressing the appropriate facility fee for OPBDs by the September 11 deadline.