

## HOUSE BUDGET BILL TARGETS NEW OFF-CAMPUS HOSPITAL DEPARTMENTS

Yesterday, the House passed a sweeping budget bill that impacts Medicare coverage of services provided in off-campus hospital departments. Currently, Medicare pays for items and services provided in both on- and off-campus hospital outpatient departments as hospital services when those departments are in compliance with 42 CFR §413.65 (the Medicare "provider-based rule"). With some limited exceptions, including ED services, applicable items and services furnished in off-campus outpatient departments on and after January 1, 2017 will be **excluded from coverage** as hospital outpatient services ("OPD services"). Specifically, the legislation's definition of "covered OPD services" **does not include** applicable items and services that are furnished on or after January 1, 2017 by an off-campus outpatient department of a provider. Payment for these services will be based on other existing payment systems applicable to the services.

There is an exception for current off-campus hospital departments that are billing for covered outpatient services as of the date of enactment of the proposed legislation, which is an amendment to the Social Security Act. This "grandfather" provision excludes such departments from the term "off-campus outpatient department of a provider," thus protecting hospital coverage of the services in these departments beyond January 1, 2017. The proposed language does not, however, offer any grandfather protection to off-campus sites that are under development.

If the legislation is approved, this means that only off-campus hospital departments **billing** for applicable services on the date of enactment will be grandfathered and able to receive Medicare payment as a hospital after January 1, 2017. The Senate is expected to vote on the measure this week and enactment could be as early as this weekend. On-campus departments and remote locations are not impacted by this legislation. Further, the legislation is an amendment to the OPPI section of the Social Security Act, so it should not apply to critical access hospitals. The legislation could, however, create an inability to bill for some new off-campus outpatient services that are not reimbursed under either the Medicare Physician Fee Schedule or the Medicare ASC Fee Schedule, including certain outpatient cardiac services.

As written, the legislation would potentially allow new provider-based outpatient departments that are within 250 yards of a remote location (defined as an inpatient location of a hospital not on the hospital's main campus - common in a multicampus hospital structure). This is a departure from the current Medicare provider-based rule that requires all on-campus provider-based departments to be within 250 yards of the hospital's main provider. While Congress may be tightening the reins on off-campus provider-based departments going forward, it may be possible to restructure arrangements under development by considering options for creating a remote location, assuming the regulatory structure is revised accordingly.

We continue to monitor this proposed amendment and will provide updates accordingly. If you have questions regarding the proposed amendment, the impact on Medicare coverage and billing, or other regulatory issues, please contact:

- John Williams at [jwilliams@hallrender.com](mailto:jwilliams@hallrender.com) or (202) 370-9585;
- Andrea Impicicche at [andrea@hallrender.com](mailto:andrea@hallrender.com) or (317) 977-1578;
- Regan Tankersley at [rtankers@hallrender.com](mailto:rtankers@hallrender.com) or (317) 977-1445; or
- Your regular Hall Render attorney.

Please visit the Hall Render Blog at <http://blogs.hallrender.com/> or click [here](#) to sign up to receive Hall Render alerts on topics related to health care law.