Health Care Alert: Budget Act to Significantly Reduce Hospital Provider-Based Reimbursement For New, Off Campus Sites

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The Bipartisan Budget Act of 2015 (the Act) was enacted just days ago. When the Act takes effect, it will materially reduce reimbursement for **new**, **off campus hospital outpatient departments** (OPD), such as hospital-based clinics. Currently, off campus provider-based OPDs are reimbursed under the Medicare Hospital Outpatient Prospective Payment System (OPPS). Under the Act, beginning on January 1, 2017, most items and services furnished by a new, off campus OPD will no longer be paid under the OPPS, but rather the lower reimbursed Medicare Physician Fee Schedule or Ambulatory Surgical Center Prospective Payment System (assuming the site is properly enrolled in Medicare and otherwise meets the requirements to receive payments under these alternative reimbursement systems).

There are important exceptions to this change:

- **Existing OPDs.** The Act grandfathers provider-based OPDs that were billing under the OPPS prior to the date of enactment (November 2, 2015). Thus, the Act will not impact existing provider-based OPDs, but may impact new sites for which billing commences following enactment. However, the grandfathering provision does not correspond to the date that CMS will cease OPPS reimbursement for new, off-campus OPDs, creating an open issue for new OPDs that begin billing after the date of enactment, but before January 1, 2017.

- **On Campus OPDs.** The Act will not apply to "on campus" OPDs. Under the Act, "on campus" is defined as either: (i) the physical area immediately adjacent to the provider's main buildings and other areas and structures that are not strictly contiguous to the main buildings, but are located within 250 yards of the main buildings; or (ii) within 250 yards from a remote location of a hospital facility (e.g., hospitals that furnish inpatient hospital services under the name, ownership, and financial and administrative control of the main provider). The Act expands the current definition of a hospital's "campus" to include OPDs located near remote locations of a hospital, which will limit the overall reach of the Act to some degree.

- **ED Services.** The Act will not apply to items and services furnished by a dedicated emergency department, meaning either a department or facility of a hospital that: (i) is licensed by the state as an emergency department or emergency room; (ii) is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or (iii) in the previous calendar year, provided at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. Those items and services will continue to be reimbursed under the OPPS.

Regulatory guidance is needed to explain multiple open issues and implications under the Act, and there is certainly time for the requirements of the Act to be revised or postponed going forward. Regardless of what the future holds, the Act is clearly a big step toward reimbursement neutrality and away from site of service billing, likely in response to increased consolidation within the industry and increased implementation of off-campus provider-based sites in recent years. Consideration must also be given to how the Act could impact billing under Medicaid (to the extent the Medicaid program in a given state follows the Medicare provider-based standards, as in Ohio), as well as potential private payor arrangements. The Act may also impact 340B drug access (typically limited to provider-based sites), and we cannot say at this time whether the exceptions to the Act are actually permanent.

While the Act is understandably creating significant concern within the hospital community and elsewhere (including the real estate community), it also serves as a stark reminder to hospitals to periodically audit their existing provider-based sites to ensure continued compliance with Medicare's many operational, financial, and administrative integration requirements. Vorys has developed several tools to audit provider-based compliance for existing sites and to design and implement new provider-based sites in compliance with current law. A provider's failure to engage in such a review, or its failure to return amounts which may have been paid in error due to incorrect site of service billing, could have very serious compliance consequences, including the potential loss of Medicare participation and staggering financial consequences under the federal False Claims Act.

Vorys will be hosting a webinar on the Act and the impact it will have on new OPDs on December 9, 2015 at 12pm. If you have any questions regarding the Act and its impact on provider-based billing, or provider-based compliance for existing sites, please contact Jolie Havens (614.464.5429) or Stephanie Angeloni (330.208.1136).