HEALTH CAPITAL Topics
Volume 8
Issue 12
December 2015
Todd A. Zigrang, MBA, MHA, ASA, FACHE, Publisher • Jessica L. Bailey, Esq., Editor ©

Congress Changes Reimbursement Rules for Off-Campus Facilities

On November 2, 2015, President Obama signed into law the *Bipartisan Budget Act of 2015* (BBA).[1] While the law contains a number of budgetary changes that impact broader economic issues, including the debt ceiling and the federal tax code, the law also prohibits off-campus *hospital outpatient departments* (HOPDs), also called provider-based departments, created after November 2, 2015, from collecting Medicare reimbursement for non-emergency services under the *outpatient prospective payment system* (OPPS) starting on January 1, 2017.[2] This change in hospital outpatient billing may impact current and future planning by providers in regard to establishing off-campus HOPDs. This *Health Capital Topics* article will detail the provisions of the BBA related to hospital outpatient reimbursement and discuss the impact of the BBA on hospital outpatient facilities.

The BBA's hospital outpatient provisions alter previous reimbursement rules regarding off-campus provider-based departments.[3] Currently, the *Centers for Medicare and Medicaid Services* (CMS) recognizes stand-alone facilities that are owned and operated by a main provider, such as an integrated health system, as part of the main provider's group.[4] These stand-alone facilities are given provider-based status,[5] which allowed the facility to bill for services provided to Medicare under the hospital OPPS, regardless of whether the facility was located on the hospital's campus.[6] Instead, to qualify for OPPS reimbursement under the old rules, the facility must simply provide services that are of the same type as those furnished by the main provider, and must be under the main provider's financial and administrative control.[7]

Generally, reimbursement is considerably higher under the OPPS than other fee schedules, such as the *Medicare Physician Fee Schedule* (MPFS) or the *Ambulatory Surgical Center Fee Schedule* (AFCFS), because the OPPS provides both a facility fee and a higher conversion factor (which is used to determine the dollar amount of a service) for operating as part of a hospital.[8] The higher reimbursement level often given at HOPDs relative to other provider settings, such as ASCs, has created controversy in recent years. The *American Hospital Association* (AHA) has consistently argued that higher reimbursement for HOPDs is necessary because of the additional capabilities and regulations faced through the hospital affiliation.[9] However, the *Medicare Payment Advisory Commission* (MedPAC) has encouraged Congress to level certain payments[10] between provider-based departments and freestanding physician offices, arguing the services provided are of the same quality at both facilities.[11]

The passage of the BBA fundamentally altered the reimbursement environment for new HOPDs. Under §603 of the BBA, any off-campus HOPDs that expect to begin billing Medicare after November 2, 2015, will only be able to utilize the OPPS for reimbursement through December 31, 2016. From January 1, 2017, and beyond, these facilities will instead receive reimbursement under an alternative fee schedule, such as the MPFS or the ASCFS.[12] In passing the BBA, Congress acted further than MedPAC's recommendation, mandating site-neutral payments for all services and items furnished at off-campus HOPDs.[13] The BBA does not impact rural health clinics or federally qualified health clinics,[14] nor does the BBA impact provider-based entities which furnish services of a different type from those of the main provider.[15] In addition, the law explicitly states that it does not affect outpatient departments on the campus of the provider or within 250 yards of a hospital facility, as these facilities are classified as on-campus facilities.[16]

The BBA provides two exceptions to the prohibition of OPPS reimbursement to HOPDs. First, the BBA does not affect reimbursement for provider-based facilities that operate as *designated emergency departments*.[17] In order to qualify as a *designated emergency department*, the facility must meet at least one of the following requirements:

(1) *"The facility is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;*
(2) *The facility 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,*
(3) *During the calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during that calendar year, the facility provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent*

(Continued on next page)

basis without requiring a previously scheduled appointment."[18]

The second exception applies to off-campus HOPDs that already receive reimbursement under the Medicare OPPS as of November 2, 2015.[19] Under this exception, the BBA grandfathers in any currently existing off-campus HOPDs, allowing them to continue to bill under the OPPS rather than an alternative fee schedule, such as the MPFS or the ASCFS.[20]

The BBA's HOPD reimbursement changes are expected to save Medicare $9.3 billion once implemented.[21] However, the changes may deter hospitals from developing new off-campus HOPDs, including in underserved areas.[22] In addition, the BBA HOPD reimbursement changes could affect 340B prescription drug discounts that are available to qualified hospital outpatient locations that report as Medicare-reimbursable outpatient locations on the hospital's Medicare cost report.[23]

For those facilities that are not grandfathered for OPPS reimbursement, administrators may consider other options. For example, new or planned HOPDs can either become freestanding physician offices or ASCs, with lower reimbursement rates.[24] Some facilities that were not grandfathered under the BBA may consider the feasibility of becoming a stand-alone emergency department in order to retain the OPPS benefits; however, this change would likely require the facility to satisfy extensive regulatory hurdles, such as the *Emergency Medical Treatment and Labor Act* (EMTALA), which may not be feasible depending on the facility and services provided.[25] Further, non-grandfathered provider-based departments seeking OPPS reimbursement may be able to reorganize as provider-based entities and provide different services from the main provider. Hospitals considering creating off-campus HOPDs may need to consider both the ability to provide quality patient care and the financial feasibility of such ventures in light of the BBA. It is possible that CMS will release additional commentary discussing the change, so hospitals may benefit from monitoring CMS guidance released over the next year.[26]

1 "Bipartisan Budget Act of 2015" H.R. 1314, 114th Cong., § 603 (October 30, 2015).
2 *Ibid*.
3 *Ibid*; "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(a)(2) (October 1, 2011).
4 "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(a)(2).
5 *Ibid*.
6 "Hospital Outpatient Prospective Payment System" CMS, December 2014, https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/HospitalOutpaysysfctsht.pdf (Accessed 12/17/15), p. 4.
7 "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(a)(2).
8 "Report to the Congress: Medicare Payment Policy" Medicare Payment Advisory Commission, Report for Congress, March 2015, http://www.medpac.gov/documents/reports/mar2015_entirereport_revised.pdf?sfvrsn=0 (Accessed 7/17/2015), p. 51, 117; see also "Hospital Outpatient Prospective Payment System" CMS, December 2014, p. 5.
9 "Hospital Outpatient Department (HOPD) Costs Higher than Physician Offices Due to Additional Capabilities, Regulations" AHA, 2012, www.aha.org/content/12/hopdcostspict.pdf (Accessed 12/17/15); see also "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(d)(5) (October 1, 2011).
10 In MedPAC's 2015 Report to Congress, it reiterated its 2014 recommendation to make evaluation and management payments equal for HOPDs and freestanding physician offices and to adjust the OPPS payment rates for a set of services to more closely align the two payment settings. "Report to the Congress: Medicare Payment Policy" Medicare Payment Advisory Commission, Report for Congress, March 2015, http://www.medpac.gov/documents/reports/mar2015_entirereport_revised.pdf?sfvrsn=0 (Accessed 7/17/2015), p. 53.
11 "Report to the Congress: Medicare Payment Policy" Medicare Payment Advisory Commission, March 2015, p. 51.
12 "Bipartisan Budget Act of 2015" § 603(2)(C), October 30, 2015; "Section by Section Summary of H.R. 1314" House of Representatives (November 2, 2015) http://docs.house.gov/meetings/RU/RU00/CPRT-114-RU00-D001.pdf (Accessed 12/17/15), p. 6.
13 "Bipartisan Budget Act of 2015" § 603(2)(B), October 30, 2015.
14 "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(a)(2) (October 1, 2015).
15 "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(a)(2).
16 "Bipartisan Budget Act of 2015" § 603(2)(B)(i), October 30, 2015; "Requirements for a Determination That a Facility or an Organization Has Provider-Based Status" 42 C.F.R. § 413.65(a)(2).
17 "Bipartisan Budget Act of 2015" § 603(2)(A), October 30, 2015.
18 "Special Responsibilities of Medicare Hospitals in Emergency Cases" 42 C.F.R. § 489.24(b) (October 1, 2015).
19 "Bipartisan Budget Act of 2015" § 603(2)(B)(ii), October 30, 2015.
20 "Section by Section Summary of H.R. 1314" House of Representatives, November 2, 2015, p. 6.
21 "Budget Deal Will Impact Hospital Acquisitions of Physician Practices" McDonald Hopkins, LLC (November 4, 2015), http://www.mcdonaldhopkins.com/alerts/healthcare-Budget-deal-will-impact-hospital-acquisitions-of-physician-practices (Accessed 12/17/15).
22 "Bipartisan Budget Act Means No New Off-Campus Hospital Outpatient Departments" By Sydney R. Nash, Esq., and Danielle M. Sloane, Esq., Bass Berry & Sims, November 2, 2015, http://www.bassberry.com/publications/2015/11/bipartisan-budget-act-means-no-new-off-campus (Accessed 12/22/15).
23 "Congress Takes Step Toward Site-Neutral Medicare Payments in Bipartisan Budget Act of 2015" McDermott, Will, & Emery (October 29, 2015), http://www.mwe.com/Congress-Take-Step-Toward-Site-Neutral-Medicare-Payments-in-Bipartisan-Budget-Act-of-2015-10-29-2015/ (Accessed 12/17/15).
24 *Ibid*.
25 Nash and Sloane, November 2, 2015.
26 *Ibid*.

(Continued on next page)

HCC
HEALTH CAPITAL CONSULTANTS

(800) FYI - VALU

Providing Solutions in the Era of Healthcare Reform

Founded in 1993, HCC is a nationally recognized healthcare economic financial consulting firm

- **HCC Home**
- **Firm Profile**
- **HCC Services**
- **HCC Experts**
- **Clients & Projects**
- **HCC News**
- **Upcoming Events**
- **Contact Us**
- **Email Us**

HEALTH CAPITAL CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.

Robert James Cimasi, MHA, ASA, FRICS, MCBA, CVA, CM&AA, serves as Chief Executive Officer of **HEALTH CAPITAL CONSULTANTS** (HCC), a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Master in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Institution of Chartered Surveyors (FRICS – Royal Institution of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, and is the author of several books, the latest of which include: "*Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA]; "*Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services*" [2014 – John Wiley & Sons]; "*Accountable Care Organizations: Value Metrics and Capital Formation*" [2013 - Taylor & Francis, a division of CRC Press]; and, "*The U.S. Healthcare Certificate of Need Sourcebook*" [2005 - Beard Books].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious "*Shannon Pratt Award in Business Valuation*" conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS).

Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of the "*Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).

John R. Chwarzinski, MSF, MAE, is Senior Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC). Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, as well as, economic and financial analysis. Mr. Chwarzinski is the co-author of peer-reviewed and industry articles published in *Business Valuation Review* and *NACVA QuickRead*, and he has spoken before the Virginia Medical Group Management Association (VMGMA) and the Midwest Accountable Care Organization Expo.

Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. He is a member of the St. Louis Chapter of the American Society of Appraisers, as well as a candidate for the Accredited Senior Appraiser designation from the American Society of Appraisers.

Jessica L. Bailey-Wheaton, Esq., is Senior Counsel of **HEALTH CAPITAL CONSULTANTS** (HCC), where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.

Kenneth J. Farris, Esq., is a Research Associate at **HEALTH CAPITAL CONSULTANTS** (HCC), where he provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services, and tracks impact of federal and state regulations on healthcare exempt organization transactions. Mr. Farris is a member of the Missouri Bar and holds a J.D. from Saint Louis University School of Law, where he served as the 2014-2015 Footnotes Managing Editor for the *Journal of Health Law & Policy*.