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TRIAGE: RAPID LEGAL LESSONS FOR BUSY
HEALTH CARE PROFESSIONALS



Segment 4 of 4

**Section 603 Site-Neutral
Payment: Mid-Build
Exception**

Joe Leahy

BACKGROUND

- Section 603 generally established a new, reduced site-neutral payment for certain off-campus hospital provider-based departments established on or after the date of enactment (Nov. 2, 2015).
- In the Proposed Rule implementing Section 603, CMS generally described PBDs that were furnishing items and services covered under OPPS prior to Nov. 2, 2015 as “excepted” from application of the site-neutral payment rule.

BACKGROUND - THE MID-BUILD PROBLEM

- Stakeholders were concerned that Section 603 did not obviously provide relief for PBDs that were not yet furnishing items or services that were covered under OPPS, but were under development at the time of enactment.

PRESSURE TO PROVIDE RELIEF

- The Helping Hospitals Improve Patient Care Act of 2016, which passed the House in June 2016 but did not ultimately become law, would have provided some relief.
- Numerous commenters to the Proposed Rule expressed concerns that such “mid-build” PBDs, which were being developed with a reasonable expectation that OPPS reimbursement would be available, would be financially disadvantaged as a result of the immediate affect Section 603.
- Commenters urged CMS to allow such mid-build PBDs to be excepted from the site-neutral payment rule.

FINAL RULE – STILL NO RELIEF

- In spite of this significant pressure, CMS generally declined to create a mid-build exception because no such relief was identified in the text of Section 603.

21ST CENTURY CURES ACT

- Instead, components of prior legislation were incorporated into the 21st Century Cures Act, which became law on December 13, 2016.
- The 21st Century Cures Act generally amends the Social Security Act language previously added by Section 603 to add an exception to the site-neutral payment rule for certain “mid-build” PBDs that were not yet furnishing items or services reimbursed under OPPS on Nov. 2, 2015.

21ST CENTURY CURES ACT - 2017

- For items and services furnished in CY 2017, the off-campus PBDs may be deemed to have been billing for services furnished prior to November 2, 2015 if:
 - The hospital submitted a provider-based attestation prior to December 2, 2015.
 - The hospital had in place, prior to November 2, 2015, a binding written agreement with an outside unrelated party for the actual construction of the PBD.

21ST CENTURY CURES ACT – 2018 AND BEYOND

- For items and services furnished during CY 2018 and beyond, an off-campus PBD will be excepted if:
 - A provider-based attestation is received no later than 60 days after enactment of the Cures Act;
 - The hospital includes the PBD on its Medicare enrollment record; and
 - The hospital had in place, prior to November 2, 2015, a binding written agreement with an outside unrelated party for the actual construction of the PBD, and a written certification is received from its chief executive officer or chief operating officer to this effect within 60 days of the date of enactment of the Cures Act.

PAYMENT UNDER MID-BUILD EXCEPTION

- Sub-regulatory guidance issued by CMS indicates that PBDs meeting the statutory mid-build exception should not use the “PN” modifier which would trigger the new site-neutral payment under the Medicare Physician Fee Schedule.
- Instead, such departments should report the “PO” modifier as appropriate.

Today's Presenter



Joe Leahy

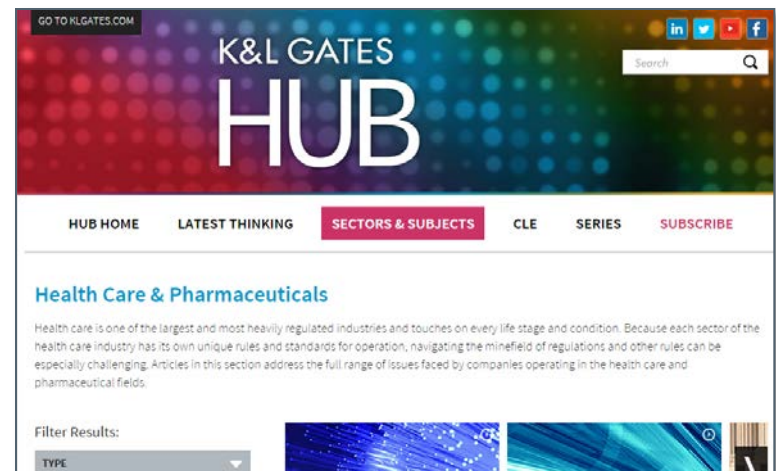
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