

Section 603 of the Balanced Budget Act of 2015

CHA MEMBER FORUM

August 04, 2016



CALIFORNIA
HOSPITAL
ASSOCIATION



Today's Speakers



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Agenda

- Welcome
- Section 603 Overview
- Legislative & Regulatory Efforts
- Proposed Regulation
- Next Steps for Advocacy
- Q & A



Section 603 of the Balanced Budget Act of 2015

- Implements site-neutral payments for new off-campus provider-based hospital outpatient departments — those that began billing on or after Nov. 2, 2015 (the date of enactment of the legislation) – beginning January 1, 2017
- Exemptions:
 - On campus provider-based departments (grandfathered facilities billing before November 2)
 - A provider-based department within 250 yards
 - A dedicated emergency department
- This does not apply to CAH, RHCs or FQHCs



Section 603

For Off-campus HOPD
Services billing on or after
Nov. 2, 2015



Beginning January 1, 2017
Payments will be made
“under the applicable
payment system” i.e.
Physician Fee Schedule,
Ambulatory Surgery Center,
or Clinical Lab Fee Schedule
Rates

CHA Detailed Summary of BBA is available at

http://www.calhospital.org/sites/main/files/file-attachments/slavitt_603_060716_final_to_cms_w_attachment.pdf



Section 603

Left open many questions

- Relocation
 - Seismic compliance
- Expansion of services
- Change in ownership
- Payment for services not paid under other applicable Part B payment systems i.e. Partial Hospitalization



Advocacy Plan

Legislative Efforts

+

Regulatory Efforts

=

**Expanded # of hospitals that will
continue to receive OPPS payments**



Legislative Effort

- H.R. 5273 – expands grandfather to those already in development on date of enactment (Nov. 2, 2015)
- Challenges:
 - Cost
 - Calendar
- “Dear Colleague” letters to CMS – 285 members signed
- CA Democrats meeting with Slavitt – July 6



HR 5273

- Introduced May 18
- House approved June 7
- Senate Finance Consideration

Visit CHA Federal Alerts for more info

<http://www.calhospital.org/calls-actionfederal>



CALIFORNIA
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Leadership in Health Policy and Advocacy



May 19, 2016

CHA News

Daily briefing for California hospitals

TODAY'S TOP DEVELOPMENTS:

- **CHA Advocacy Alert: New Hospital Outpatient Department Legislation on Fast Track — Will it Help You?**
- Summary of Hospice Proposed Rule Available
- Membership Directory Released
- CHA Participates in ASHHRA Advocacy Day
- Medi-Cal DRG Provider Webinars Highlight Changes Effective July 1
- Upcoming CHA Education Events
- News Headlines - Top Stories From State & National Newspapers

CHA Advocacy Alert: New Hospital Outpatient Department Legislation on Fast Track — Will it Help You?

Alert

Action needed: CHA encourages hospital executives to review H.R. 5273, attached, to assess its potential impact on any new off-campus outpatient departments, and to share their findings with CHA.

Timing: Urgent — The bill could be voted on May 24.

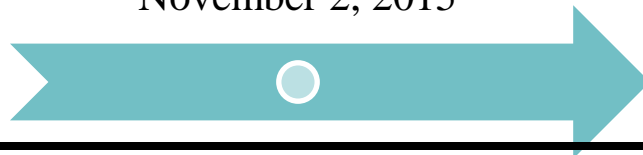
On May 18, Reps. Pat Tiberi (R-OH) and Jim McDermott (D-WA), the chair and ranking member, respectively, of the House Ways and Means Health Subcommittee, introduced The Helping Hospitals Improve Patient Care Act of 2016, H.R. 5273. They plan to move the legislation quickly, perhaps as early next week. The bill would make adjustments to the hospital readmissions program and change the grandfathering provision of last year's Bipartisan Budget Act that changes the way new off-campus hospital facilities would be paid. The legislative language, a section-by-section summary and CHA's detailed summary of two key provisions are attached.

CHA is working to understand the impact the new dates and requirements outlined in H.R. 5273 would have on California hospitals with new off-campus facilities. Because the new requirements include documentation that only hospitals will have (attestation and building contracts), CHA needs to hear from hospitals about the bill's potential impact. Hospitals are asked to review the attached documents to determine if their hospital's new off-campus outpatient department would qualify and contact Anne O'Rourke in CHA's Washington, D.C.

Current Law: Section 603

Off-campus HOPD Services
furnished or billing *on or after*
November 2, 2015

CY 2017
PFS/ASC/
CLFS Rates



HR 5273
as amended

Off-campus HOPD Services
furnished or billing *on or*
after November 2, 2015

Provider
Submits
Voluntary
Attestation



**CY 2017
OPPS
Payment
Rates**

Voluntary Attestation
Received by CMS *before*
December 2, 2015

Binding written
agreement
executed for
“actual
construction” of
HOPD prior to
November 2,
2015

60 days after
enactment
CMS receives
written
certification of
compliance with
‘mid-build
requirements’

Submission
of CMS
Enrollment
(Form 855)



November
2, 2015

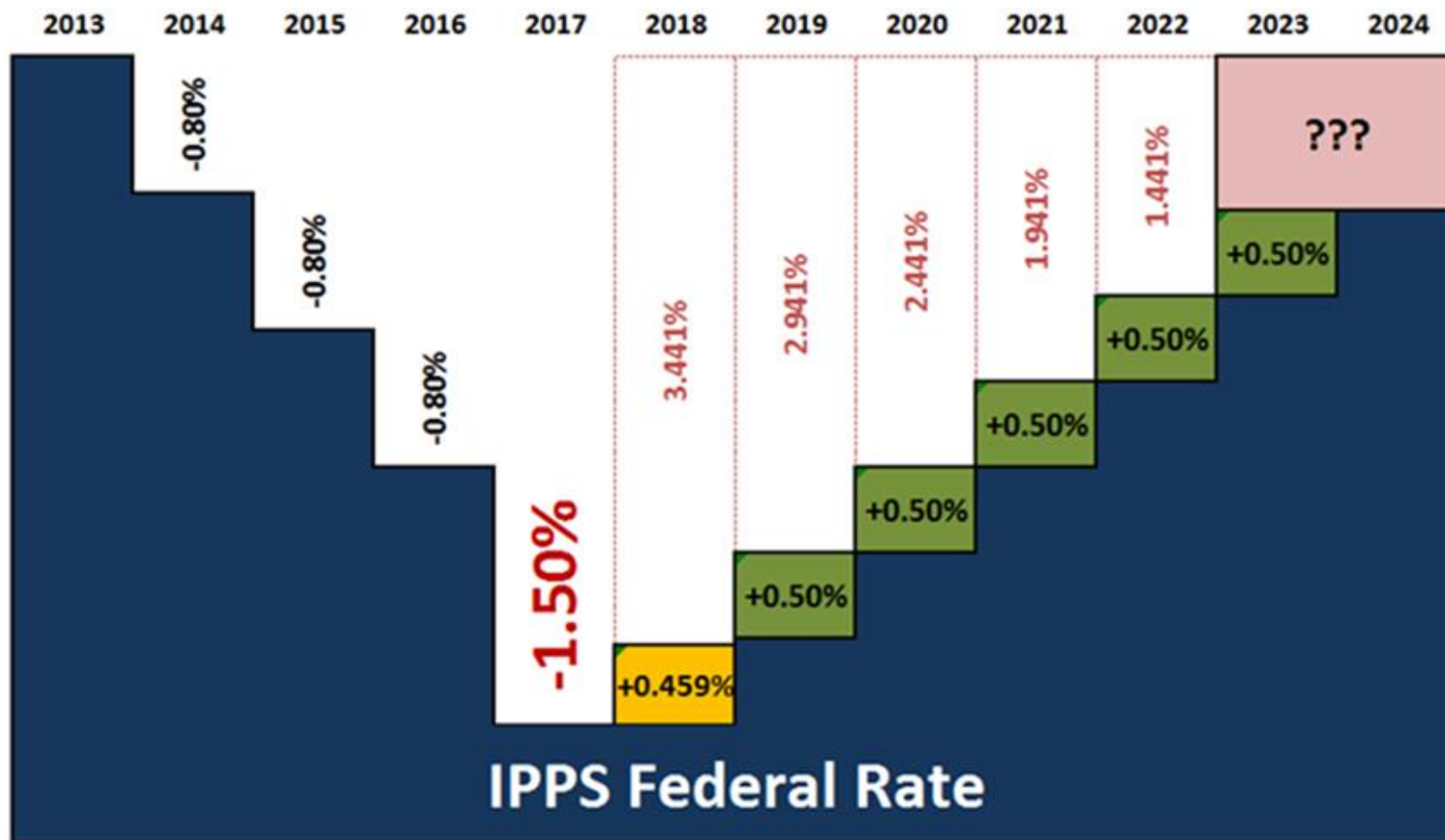
December 31, 2016
or 60 days after
enactment, if later,
CMS receives
voluntary attestation

**CY 2018
OPPS
Payment
Rates**

May 25, 2016



HR 5273 – 0.041 offset





Regulatory Efforts

- Planned rulemaking: CY 2017 OPPS Proposed rule
- Ensure cuts are implemented in the most fair, favorable and flexible manner possible. Specifically:
 - Allow existing hospital outpatient departments (HOPDs) to relocate and expand services
 - Allow existing HOPDs to change ownership
 - Address seismic relocation issues and new facilities that had opened but may not have billed Medicare
- Limit administrative burden by ensuring HOPD continues to bill on UB 04, not the CMS 1500
- Multiple meetings with CMS leadership and staff
 - http://www.calhospital.org/sites/main/files/file-attachments/slavitt_603_060716_final_to_cms_w_attachment.pdf



Implementation of Section 603

- CY 2017 OPPS Proposed Rule issued July 6
 - CHA First Glance available at <http://www.calhospital.org/cha-news-article/cha-issues-first-glance-summary-cy-2017-opps-proposed-rule>
- Comments are due September 6
- Final Rule will be issued around November 1
- Effective Date: January 2, 2017
- CHA Member Forum on OPPS: **August 18, 10:30-Noon**
Register by August 16 at
<https://www.surveymonkey.com/r/OPPSForum>



CY 2017 OPPS Proposed Rule Overview

- Creates and defines terms including “excepted items and services” to describe those items and services that are excluded, or “excepted,” from the Section 603 site-neutral payment system policy and, therefore, would still be paid under the OPPS.

“Excepted” = Grandfathered services

- Defines “off-campus PBDs” and proposes the requirements that would allow certain off-campus PBDs to retain their “excepted” status, both in terms of the facility itself, as well as for the items and services it furnishes.
- Establishes new payment policies for “non-excepted” items and services.



Continued Payment under OPPS

- “Excepted items and services” would continue to be paid under OPPS if they are:
 - Furnished in a dedicated emergency department (as defined under EMTALA)
 - The PBD furnished and submitted a bill for OPPS service before Nov 2*
 - Services provided are in the same “clinical family of services” prior to Nov 2
- On-campus PBD are excepted (grandfathered) and continue to receive OPPS payments
- Services provided within 250 yds. of remote location



Relocation of Existing PBD

- PBD essentially frozen in time



- CMS proposes off-campus PBD must retain the same physical address, including the suite number to retain its “excepted” status and continue to receive OPPS rates
- If a PBD changes location, it would be subject to a different applicable payment system
- CMS proposes a limited exception process for comment
- Most concerning for California hospitals as this impacts many plans for meeting seismic compliance



Expansion of Services

- CMS proposes that “excepted” off-campus PBDs would continue to receive OPPS only for those items and services furnished and billed before November 2, 2015
- CMS proposes that service types be defined by 19 clinical families
- Any specific service within the clinical family furnished before November 2, that entire clinical family of services would continue to be paid under OPPS
- CMS proposes that any expansion of services beyond those furnished under the specific clinical families would be subject to site neutral rates



Proposed Clinical Families of Services

Clinical Families	APCs
Advanced Imaging	5523-25, 5571-73, 5593-4
Airway Endoscopy	5151-55
Blood Product Exchange	5241-44
Cardiac/Pulmonary Rehabilitation	5771, 5791
Clinical Oncology	5691-94
Diagnostic tests	5721-24, 5731-35, 5741-43
Ear, Nose, Throat (ENT)	5161-66
General Surgery	5051-55, 5061, 5071-73, 5091-94, 5361-62
Gastrointestinal (GI)	5301-03, 5311-13, 5331, 5341
Gynecology	5411-16
Minor Imaging	5521-22, 5591-2
Musculoskeletal Surgery	5111-16, 5101-02
Nervous System Procedures	5431-32, 5441-43, 5461-64, 5471
Ophthalmology	5481, 5491-95, 5501-04
Pathology	5671-74
Radiation Oncology	5611-13, 5621-27, 5661
Urology	5371-77
Vascular/Endovascular/Cardiovascular	5181-83, 5191-94, 5211-13, 5221-24, 5231-32
Visits and Related Services	5012, 5021-25, 5031-35, 5041, 5045, 5821-22, 5841



Change of Ownership

- If a hospital experiences a change of ownership – in its entirety – and the new owner accepts the Medicare CCN, CMS proposes that the PBD may retain their “excepted” status
- If the provider agreement is terminated under a change of ownership, CMS proposes the off-campus PBD will lose its “excepted” status and be subject to site-neutral payment policies



What happens in 2017?

- CMS proposes that for NEW PBDs, the “applicable payment system” would be the PFS for the majority of services
- **Physicians** would be able to bill on the CMS 1500 and be paid the “higher non-facility” rate under the PFS for services they are eligible to bill
- **CMS proposes no payments be made directly to hospitals during this “transition year”**
 - CMS suggests new off-campus PBDs consider re-enrolling as a group practice or an ASC and bill for services under those applicable payment schedules



What happens in 2017?

- CMS proposes that new off campus PBD PHP programs receive the CMHC rate for PHP services rather than OPPS rates
- Providers can bill under the CLFS as appropriate
- CMS seeks comment on how providers can direct bill for services not applicable under other fee schedules
- CMS expects new relationships to form under such a proposal and seeks input on the impact of Stark and Anti-kickback
 - Limitations of the reassignment of billing rights rules, anti-markup prohibition, application of physician self referral laws etc.



Remaining Questions and Next Steps

- Impact on 340B
- Continued analysis and consultation with members
- Coordination with AHA and others in developing alignment on comments to CMS
- **Urge CMS to delay implementation of Section 603 until FY 2018 at the earliest, non-payment is unacceptable**
- Reiterate our comments on relocation, change of ownership and expansion of services with CA-specific examples
- Provide input to CMS to help them solve their technical problems without creating administrative burden for hospitals



Next Steps

- Senate consideration of HR 5273
- Changes to H.R. 5273? Depending on final rule
- Advocacy days in conjunction with AHA – August 10 and Sept. 13 – [registration info](#)
- Draft comment letter available on Section 603 provision available the week of August 29
 - **Hospitals should submit comments to CMS**
- Hospitals may wish to reexamine their long-term plans and impacts this may have on current and future lines of service provided in off campus provider-based departments



Questions?





Contact Us

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