

## Budget Bill Aims to Kill Any New Off-Campus Provider-Based Facilities



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Legislation being drafted as part of a budget deal between members of Congress and the White House includes language that will significantly alter the future of hospital-based outpatient care. The “discussion draft” of the bipartisan budget agreement would exclude from Medicare’s outpatient hospital prospective payment system (“OPPS”) any new off-campus departments of a hospital, as determined by Medicare’s provider-based standards, unless it is an emergency department.



The legislation grandfathers any off-campus departments of a hospital that have

billed Medicare under the OPSS prior to the date of the legislation's enactment, allowing them to continue to be reimbursed under the OPSS. Medicare reimbursement for non-grandfathered off-campus hospital departments may be available under other payment systems, such as the physician fee schedule or the ambulatory surgery center prospective payment system, which are generally lower than the OPSS.

Federal groups, including the Medicare Payment and Access Commission ("MEDPAC") and the Office of the Inspector General of the Department of Health and Human Services ("OIG"), have advocated reducing rates paid to certain hospital outpatient departments for years, arguing that the same services can sometimes be performed safely in a lower-cost physician office. In 2014, MEDPAC [recommended](#) that Congress reduce or eliminate differences in payment rates between hospital outpatient departments and physician offices for selected ambulatory payment classifications. The legislative language would apply the change to all ambulatory payment classifications, other than those provided in grandfathered facilities. Similar legislation has been proposed in the past, but never succeeded; this time there is momentum and not enough warning for providers to build effective coalitions to galvanize opposition.

## Key Takeaways

If enacted, this provision will significantly alter the willingness of hospitals to acquire off-campus clinical settings and convert them to provider-based hospital departments, as doing so would impose all the overhead of a hospital-based department, but at the lower rates available to a freestanding, often unregulated, facility.

If any hospitals have recently established an off-campus outpatient department, they should move quickly to get the facility operational as soon as possible, so that they may submit a bill to Medicare prior to the enactment of the new law. In appropriate cases, it may be possible to submit a place-holder bill if it is done in a legally compliant and transparent fashion.

This is a highly fluid issue. Hospitals and health systems should be working directly with their trade associations and delegations to make sure that they are aware of and responsive to these developments.

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