

Emergency Clearance Request

Temporary Extraordinary Circumstances Exception for Excepted Provider-Based Departments

(CMS-10730; OMB control number 0938-New)

Section 603 of the Bipartisan Budget Act of 2015 (BBA 2015) (Pub. L. 114-74, enacted November 2, 2015) amended section 1833(t) of the Act by amending paragraph (1)(B) and adding a new paragraph (21). As a general matter, under sections 1833(t)(1)(B)(v) and (t)(21) of the Act, applicable items and services furnished by certain off-campus outpatient departments (OPD) of a provider on or after January 1, 2017 are not considered covered OPD services as defined under section 1833(t)(1)(B) of the Act for purposes of payment under the OPPS and are instead paid “under the applicable payment system” under Medicare Part B if the requirements for payment are otherwise met.

In the CY 2017 OPPS/ASC final rule with comment period (81 FR 79699 through 79719) and the interim final rule with comment period (81 FR 79720 through 79729), we established a number of policies to implement section 603 of the BBA 2015. Broadly, CMS finalized policies that define whether certain items and services furnished by a given off-campus provider-based department (PBD) may be considered excepted, and thus, continue to be paid under the OPPS; established the requirements for the off-campus PBDs to maintain excepted status (both for the excepted off-campus PBDs and for the items and services furnished by excepted off-campus PBDs); and described the applicable payment system for non-excepted items and services (generally, the PFS).

In the CY 2017 OPPS/ASC final rule (81 FR 79704 through 79706), CMS also finalized a policy to allow excepted off-campus PBDs to relocate, temporarily or permanently, without loss of excepted status, for extraordinary circumstances outside of the hospital’s control, such as

natural disasters, significant seismic building code requirements, or significant public health and public safety issues.

The interim final rule Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (RIN: 0938-AU32) includes a provision to temporarily adopt an expanded version of the extraordinary circumstances relocation policy during the COVID-19 PHE to include on-campus PBDs that relocate off-campus during the COVID-19 PHE for the purposes of addressing the COVID-19 pandemic.

This, in turn, would require all hospitals that relocate excepted on- or off-campus PBDs to off-campus locations in response to the COVID-19 PHE to notify their CMS Regional Office by email of their hospital's CCN; the address of the current PBD; the address(es) of the relocated PBD(s); the date which they began furnishing services at the new PBD(s); a brief justification for the relocation and the role of the relocation in the hospital's response to COVID-19; and an attestation that the relocation is not inconsistent with their state's emergency preparedness or pandemic plan.

Based on our internal data, CMS generally estimates that approximately 450 hospitals will request the temporary extraordinary circumstances exception for one or more excepted provider-based departments during the PHE for the COVID-19 pandemic. These additional burden estimates require a revision to the currently approved information collection request (ICR).

As the current COVID-19 crisis expands, there is a need for flexibility of health care services provided to Medicare beneficiaries. CMS is aware that many hospitals are repurposing existing clinical and non-clinical space for use as temporary expansion sites to furnish inpatient and outpatient care during the PHE for the COVID-19 pandemic. In addition, CMS recognizes

that many hospitals are financially constrained due to the reduction in volume caused by the PHE for the COVID-19 pandemic. The expedited clearance of the provision to temporarily adopt an expanded version of the extraordinary circumstances relocation policy to include on-campus PBDs that relocate off-campus during the COVID-19 PHE is critical to ensuring beneficiaries receive access to needed care while reducing the burden on hospitals. Therefore, we ask that OMB consider the emergency clearance process to allow hospitals increased flexibility to request a temporary extraordinary circumstances exception for excepted provider-based departments during the PHE for the COVID-19 pandemic.