

February 13 Deadline Looms for Provider-Based Departments Seeking Mid-Build Exception

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A new section of the 21st Century Cures Act provides much-needed relief for hospitals with an off-campus provider-based department (off-campus PBD) that was mid-build or under development as of November 2, 2015 (the Mid-Build Exception).

Signed into law on December 13, 2016, Section 16001 specifies that off-campus PBDs meeting this exception will be eligible for full payment under the outpatient prospective payment system as of January 1, 2018, avoiding an otherwise permanent and substantial reduction in Medicare reimbursement. CMS clarified in recent sub-regulatory guidance that the deadline for hospitals to certify compliance with the Mid-Build Exception is **February 13, 2017**.

Here are the key points to remember as you prepare your certification:

- Off-campus PBDs qualify for the Mid-Build Exception if the main provider had a binding written agreement with an outside unrelated party for the actual construction of such department before November 2, 2015.
- If the hospital leases space in a new building, rather than constructing and owning the space itself, consider submitting a certification arguing that the lease agreement (particularly one that specifies interior build-out requirements) meets the requirement.
- The certification must be signed by the hospital's Chief Executive Officer or Chief Operating Officer.
- The hospital must submit the certification to the applicable Medicare Administrative Contractor (MAC) by mail or by e-mail. Hospitals should look to their MAC for guidance regarding the department or individual to whom the certification should be sent.

- In addition to the certification, the hospital is also required by statute to: (1) submit a provider-based **attestation** to the MAC by February 13, 2017, attesting to compliance with 42 C.F.R. § 413.65 generally; and (2) include the off-campus PBD on its Medicare enrollment form.
- There is no judicial or administrative review of the MAC's determination, so if there is any ambiguity in the application of the Mid-Build Exception to your hospital's off-campus PBD, consider submitting a cover letter to the MAC to explain why you believe the exception applies.

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