



**Bricker & Eckler**  
ATTORNEYS AT LAW

# Navigating provider-based status, siting new services and space sharing

Hospitals with provider-based departments and locations must navigate the increasingly complex provider-based regulatory landscape to ensure they are in compliance. Our attorneys proactively advise clients about the regulatory and sub-regulatory requirements applicable to provider-based sites.

## ▶ Provider-based status requirements and compliance

Recent legislation has significantly limited the ability for hospitals to establish new off-campus provider-based departments (OCPBD) that will receive reimbursement under the CMS Hospital Outpatient Prospective Payment System (OPPS). In addition, hospitals must take steps to avoid jeopardizing the provider-based status of an OCPBD, because once a hospital's OCPBD loses its provider-based status, its ability to receive OPPS reimbursement may be gone for good.

Providers contemplating any changes to OCPBDs need to be aware of the limitations on acceptable changes at OCPBDs if they desire to maintain their provider-based status and OPPS reimbursement. We regularly help hospitals navigate these limitations in a compliant manner and maximize the opportunity to continue receiving OPPS reimbursement.

We advise clients regarding the requirements for provider-based status and exceptions, including issues involving:

- New hospital service locations
- Expansion of services and adding space at existing sites
- Relocating hospital services and reconfiguring space at existing sites
- Changes in ownership of existing sites
- Remote locations of hospitals

## ▶ Mid-Build Exception – Attestations and CMS audits

Have a pending attestation submitted pursuant to the Mid-Build Exception? For hospitals that submitted attestations for new OCPBDs under the Mid-Build Exception prior to February 13, 2017, we can assist in responding to inquiries from CMS and preparing for CMS audits scheduled to take place in 2018.

## ▶ Provider-based attestations

To qualify for provider-based status, a site must meet the requirements of the provider-based status regulation, 42 CFR § 413.65. Many providers elect to submit voluntary attestation statements to CMS to confirm their compliance with the provider-based requirements and reduce the possibility of retrospective reimbursement recoveries. We assist hospitals in preparing attestation statements and supporting documentation to ensure that CMS agrees the site qualifies for provider-based status. Specifically, we provide guidance on:

- The numerous requirements to qualify for provider-based status:
  - Hospital licensure
  - Clinical integration
  - Financial integration
  - Public awareness
  - Location ownership and control
  - Administrative structure and supervision
  - Distance from main provider
  - Regulatory compliance
- Preparing attestation statements
- Interacting with CMS to facilitate CMS approval of attestations

## ▶ Provider-based locations and space sharing

CMS interprets the provider-based regulation as prohibiting a hospital's provider-based departments from sharing space with other non-hospital services, including physician practices, unless it is clear that the provider-based site is "sufficiently separated" from the other services or physician practices. We advise clients on configuring space, including reviewing building and floor plans, to avoid non-compliance.

## ▶ Payment/billing for services in provider-based locations

OCPBDs must use appropriate modifiers and Place of Service (POS) Codes on their claims to comply with Medicare billing requirements. We proactively advise clients on creating and modifying their billing practices to ensure compliance.

## ▶ Self-audits

Worried about whether your existing OCPBDs meet the provider-based requirements? We help hospitals maintain provider-based status at existing OCPBDs by assisting with self-audits of OCPBDs, identifying any compliance risks and recommending improvements.



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