



Off-Campus Hospital Outpatient Departments “Mid-Build” Timeline

September 10, 2021

On September 10th, CMS notified providers who were denied and exemption under the “mid-build” provision that “out of an abundance of caution in response to questions raised by providers regarding the mid-build audits, the Centers for Medicare & Medicaid Services (CMS) has elected to rescind the mid-build audit determinations issued in January of 2021 for all providers that were previously informed that they failed to qualify for the mid-build exception,” and undertake a review of the denied applications. According to CMS, 334 providers requested the mid-build exception, 132 qualified and 202 failed to qualify for the exception.

Below is a timeline of events with links to pertinent documents –

November 2, 2015 – Section 603 of the Bipartisan Budget Act of 2015 (BBA '15, [P.L. 114-74](#)) establishes that any HOPD that billed for services after November 2, 2015 would not be eligible for reimbursement under the Centers for Medicare and Medicaid Services’ (CMS) Outpatient Prospective Payment System (OPPS). Instead, HOPDs would be eligible for reimbursement under either the Ambulatory Surgical Center (ASC) or the Medicare Physician Fee Schedule (PFS) – at substantially lower rates.

December 13, 2016 – After a year-long lobbying effort, a provision to allow facilities that were “mid-build” prior to November 2, 2015 to be grandfathered into the program and receive the higher pay rate was enacted in the 21st Century Cures Act (Section 16001 of [P.L. 114-255](#)). Mid-build is defined as a provider that had a binding written agreement with an outside, unrelated, party for the actual construction of the HOPD. To qualify as mid-build, each HOPD was required to submit a certification from the provider’s Chief Executive Officer/Chief Operating Officer that the HOPD met the definition of mid-build prior to 60 days after the date of enactment (February 13, 2017). HOPDs that met all of these requirements were to receive the full HOPD payment instead of the lower PFS or ASC payments required under the BBA ‘15.

February 13, 2017 – Attestations due to CMS to determine if the HOPD met the requirements of the mid-build provision, click [here](#).

June 6, 2018 – CMS released 21st Century Cures Act Mid-Build Certification Audits Frequently Asked Questions, click [here](#).

January 19, 2021 – CMS sends HOPD mid-build determination letters to the 334 providers who attested to meeting the requirements in 2017, click [here](#) for the CMS results memo. It is unclear whether these decisions have also been frozen, pending review.

September 10, 2021 – CMS notifies denied providers that a review is underway to determine if the denials were in error of the policy.