

Report on Medicare Compliance Volume 30, Number 11. March 22, 2021 Provider Wins \$2M Appeal at ALJ Over Modifier 25, Random Sample

By Nina Youngstrom

A cancer center has won its appeal of \$2 million in Medicare claim denials in a case about modifier 25 and the extrapolation of an overpayment. Problems with the random sample underlying the extrapolation helped win the day, according to the March 2 decision by an administrative law judge (ALJ).

“It’s a big win for the oncology group,” said its attorney, Myla Reizen, with K&L Gates in Miami, Florida. The ALJ decision reinforces the fact that providers may bill for chemotherapy administration services and evaluation and management (E/M) services provided to patients on the same day, with modifier 25, as long as certain criteria are met, she said. “Documentation is key,” she noted. The decision also shows how extrapolation may be challenged, although there are limits built into the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003.

Medicare doesn’t pay physicians or other providers for E/M services (e.g., 99213–99215) performed on the same patient on the same day as a procedure unless the E/M services are significant and separately identifiable. When services are significant and separately identifiable, providers append modifier 25 and receive additional reimbursement. Misunderstanding and/or misuse of the modifier has made it a top billing compliance risk area. Modifier 25 has been at the heart of several False Claims Act and civil monetary penalty (CMP) settlements and is the focus of a CMS comparative billing report. For example, Memorial Hermann Health System in Houston agreed to pay \$6.4 million to settle a CMP case^[1] about claims that included codes for the history and physical and modifier 25.

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