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CMS Voids Mid-Build Audit Findings; New Audit Will Use Broader Construction Interpretation

By Nina Youngstrom

CMS on Sept. 10 withdrew its determination that 202 provider-based departments (PBDs) flunked audits of the mid-build exception, which allows certain PBDs established after Nov. 2, 2015, to bill the outpatient prospective payment system (OPPS).

It's back to the drawing board for the mid-build audits, but PBDs don't have to write checks for the time being. "Providers that received failing audit determinations are no longer required to report or return overpayments based on those determinations," CMS said in a new document.[1] They will receive a letter rescinding the previous determination, and then CMS will review the 202 PBDs that failed the audits "for compliance with statutory requirements and for accuracy and completeness. An updated audit determination letter will be issued following the review of each provider's audit. A new overpayment return deadline for self-identified overpayments will be included in that letter should the provider receive a failing audit determination."

PBDs will have a chance to give CMS "all relevant evidence to support their mid-build exception requests," the document states. "CMS will consider any additional documentation providers choose to submit to support their eligibility for the mid-build exception."

The decision is good news for hospitals and the attorneys who had argued that the CMS audit of the mid-build exception had strayed too far from the statute that authorized it and that the overpayment demand letters were too vague.

"It is gratifying that CMS listened to legitimate concerns from denied applicants as to how to have a fair and transparent process," said attorney Andrew Ruskin, with K&L Gates in Washington, D.C. "Many in the provider community are surely looking forward to constructive conversations regarding the statute and Congress's overarching intent in the days and weeks to come."

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