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All OIG Claim Denials From a Vent Audit Are Overturned; OIG National Audit Is Underway

By Nina Youngstrom

Even as the HHS Office of Inspector General (OIG) has a national audit underway of compliance with Medicare requirements for noninvasive home ventilators (NHVs),[1] an administrative law judge (ALJ) has thrown out the last set of claim denials stemming from an OIG audit of NHV claims submitted by a durable medical equipment (DME) supplier, ending the saga of a $29.1 million overpayment finding.[2]

The surge in Medicare spending on NHVs triggered OIG's national audit, which focuses on medical necessity and compliance with payment and documentation requirements. But the fact that Sleep Management LLC, doing business as Viemed Healthcare Inc., overturned all the appealed denials for NHVs in the OIG audit raises questions about how medical necessity is judged, according to Viemed's attorneys, Stephen Bittinger and Josh Skora with K&L Gates. Bittinger said he's never had a case where all denials were overturned. "I have never had one and I have never heard of one because there are usually at least a few claims that must be conceded based on technical noncompliance." Because of the ALJ's findings, the DME Medicare administrative contractor (MAC) has returned the "previously remitted funds" to Viemed, according to a Jan. 23 announcement by the company.[3]

The divergence between the audit findings and the ultimate disposition in the appeals process underscores tensions over the way OIG and its independent medical reviewers apply some Medicare coverage criteria, Bittinger and Skora say. Some attorneys and providers contend that OIG or its independent medical reviewers sometimes misconstrue Medicare requirements and make other mistakes when reviewing claims.[4] For example, the independent medical reviewer based its denials partly on the premise that patients must fail a "lesser device" before they can have an NHV, Skora said. "This is clinically inappropriate and dangerous for patients," he contended. And "there is no requirement to fail a lesser device because there are patients on ventilation in the hospital and they need the home version upon discharge. For this patient population, failure of a lesser device would likely result in patient death prior to NHV therapy."