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Two Courts Side With Providers in Appeals of Extrapolated Overpayments

By Nina Youngstrom

In two new cases, federal courts have ruled that providers are entitled to all the documentation used by CMS and its program integrity contractors to calculate overpayments, which is a win for providers pushing back on extrapolation, an attorney said. But one court concluded that Medicare auditors aren't required to include zero-paid claims in the "target universe" of claims, which can affect the fate of the statistically valid random sampling and extrapolation, and the other court hasn't ruled yet on the inclusion of zero-paid claims.

They are cases of "first impression," which means they're the first time that federal courts have ruled providers have a due process right to compel completion of the administrative record, said attorney Stephen Bittinger, with K&L Gates, who represented the providers in the cases.

"We have about 20 of these cases ongoing in U.S. courts in nine jurisdictions," he said. They focus on program integrity contractors failing to produce documentation that allows providers to replicate overpayment findings and the removal of zero-paid claims. Without the documentation, he said providers and suppliers don't have the tools they need to mount a valid challenge to random sampling and extrapolation "or even determine if they should." While one of the courts didn't agree that Medicare auditors should be required to include zero-paid claims in statistical sampling and extrapolations, both courts "came to the correct factual distinction" between zero-paid claims, which are claims that have been adjudicated but have a payment amount of zero, and unpaid claims, which have been submitted but not adjudicated.

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