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CMS: 202 PBDs Failed Mid-Build Exception Audit; PBD Relocation Is 'Trap for the Unwary'

By Nina Youngstrom

Robert Cross, vice president of government reimbursement at Piedmont Healthcare in Atlanta, wasn't worried when Piedmont submitted an attestation for the mid-build exception to the prohibition on new provider-based departments (PBDs) to CMS in 2017. An outpatient surgery center at one of its flagship hospitals met all the requirements—including a 2008 construction contract with an independent company—and he'd been assured by CMS that "things looked good," Cross said. The subsequent audits of compliance with the mid-build exception didn't weigh heavily either, although he preferred to know the results sooner rather than later. A lot of money rides on whether PBDs meet an exception and therefore bill the full outpatient prospective payment system (OPPS) rate.

That's why Cross said it was "mindboggling" when CMS said Jan. 19 that Piedmont's outpatient surgery center was one of 202 off-campus PBDs that "failed to qualify for the exception," according to a fact sheet[1] posted by the CMS Office of Financial Management. The timing was particularly irritating. CMS announced the audit findings on the last full day of the Trump administration, more than two years after the audits began. "Like everybody else, we were told by CMS that the audits would begin in December of 2018. But then we all received the silent treatment," Cross said.

CMS audited the mid-build exception to the prohibition on billing the OPPS by off-campus PBDs established after Nov. 2, 2015. Congress cut them off in Sec. 603 of the 2015 Bipartisan Budget Act, and now CMS pays "non-excepted" PBDs 40% of the OPPS rate under the Medicare physician fee schedule. An exemption was created by the 21st Century Cures Act for off-campus PBDs that were under construction when the switch was flipped Nov. 2, 2015, with some strings attached. Hospitals were required to: (1) file an attestation with CMS that the department was, in fact, provider-based, and it had to be signed by a CEO or chief operating officer; (2) add the PBD to its 855A enrollment form; and (3) have proof of a signed contract for construction of the PBD before Nov. 2, 2015.