Mid-Build Exception Audit Rescission Announcement

The Centers for Medicare & Medicaid Services (CMS) is announcing that it is rescinding the audit determinations for providers notified in January of 2021 that they had failed to qualify for what is known as the "mid-build exception." CMS is taking this action out of an abundance of caution in response to questions raised by providers regarding the audits.

The Bipartisan Budget Act of 2015 changed the way off-campus provider-based departments are paid for items and services furnished to Medicare beneficiaries. Under the law, existing off-campus provider-based departments could continue to be paid as they were before under the Outpatient Prospective Payment System (OPPS). New departments would be paid under the "applicable payment system" (determined by CMS to be the Physician Fee Schedule). The 21st Century Cures Act gave some providers the ability to claim an exception for the off-campus provider-based department to continue to be paid under the OPPS, for example, if the department was "mid-build" at the time of the enactment of the Bipartisan Budget Act of 2015.

CMS will review each previously failing provider's audit findings for compliance with statutory requirements and for accuracy and completeness. To be certain that all providers have been given a full opportunity to provide all relevant evidence to support their mid-build exception requests, CMS will consider any additional documentation providers choose to submit to support their eligibility for the mid-build exception. All documentation submitted by providers, both before and after issuance of the audit determination letters issued in January 2021, will be considered during this review. These reviews will utilize a broadened interpretation of what constitutes a valid construction contract required to qualify for the mid-build exception. As an example, there now may be scenarios in which a lease agreement executed by the provider could satisfy this exception.

Providers that received failing audit determinations are no longer required to report or return overpayments based on those determinations. Each provider will receive a letter rescinding the previous determination. 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.

Additional information about the mid-build exception audits and this announcement can be found at https://www.cms.gov/Medicare/Compliance-and-Audits/Part-A-Cost-Report-Audit-and-Reimbursement/21st-Century-Cures-Act-Mid-Build-Audits.