

September 10, 2021

## CMS to Review Mid-build Exception Audit Determinations for Hospitals that Failed to Qualify

*AHA strongly urged CMS to rescind prior audit denials*

As strongly advocated by the AHA, the Centers for Medicare & Medicaid Services (CMS) today [announced](#) that it is rescinding prior audit denials for hospitals that had failed to qualify for the “mid-build exception” so that the agency can review the determinations. CMS indicates that it is taking this action out of an “abundance of caution” in response to questions raised by providers regarding the audits. The AHA has [repeatedly urged](#) the agency to rescind these faulty audit denials and to establish an informal review process to correct the errors in the determinations.

**Specifically, consistent with the AHA’s recommendations, CMS states that it will review each hospital’s previously failing audit findings for compliance with statutory requirements and for accuracy and completeness.** These reviews will use a broadened interpretation of what constitutes a valid construction contract required to qualify for the mid-build exception. For example, there now may be scenarios in which a lease agreement executed by the hospital could satisfy this exception.

**Hospitals that received failing audit determinations are no longer required to report or return overpayments by Sept. 16 based on those determinations.** CMS notes that each hospital will receive a letter rescinding the previous determination. An updated audit determination letter will be issued following the review of each hospital’s audit. A new overpayment return deadline for self-identified overpayments also will be included in that letter should the hospital receive a failing audit determination.

Background. The 21st Century Cures Act included an exception to the site-neutral payment provisions of the Bipartisan Budget Act of 2015 (BiBA) for hospitals that were in the middle of building new off-campus provider-based departments when BiBA was enacted. Hospitals that were “mid-build” had to submit certain materials to their Medicare Administrative Contractor by a deadline. Once they applied for this mid-build exception, they were able to bill for and receive the full Medicare outpatient rate.

The 21st Century Cures Act also required CMS to audit all the mid-build exception applications by Dec. 31, 2018, and excluded the audit results from administrative or judicial review.

However, CMS did not send letters to hospitals notifying them of the results of these audits until Jan. 19, 2021, more than two years after the statutory deadline; and 202 of

the 334 applicants failed the audit. The AHA has strongly urged CMS to address this issue because the agency had required providers to investigate and identify any overpayments by July 18 (180 days after receiving the audit denial letter) and to report and return any overpayments by Sept. 16 (240 days after the audit denial letters were sent).

### **FURTHER QUESTIONS**

If you have questions, please contact AHA at 800-424-4301.