

## Report on Medicare Compliance Volume 31, Number 32. September 05, 2022

### New Lawsuit Aims to Require Medicare Auditors to Include Underpayments in Audit Samples

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By Nina Youngstrom

In a lawsuit filed against HHS Aug. 4, a lab alleges that a Medicare program integrity contractor failed to include zero-paid claims with the overpayments in its audit sample, or share required audit papers, in violation of federal law.<sup>[1]</sup> The lawsuit is a reckoning over statistical sampling and extrapolation, with the larger goal of fairness for providers by compelling Medicare auditors to add underpayments and zero-paid (unpaid) claims to their audits and show their work, as required by the 2006 Tax Relief and Healthcare Act and the Medicare Program Integrity Manual (MPIM),<sup>[2]</sup> according to the allegations in the lawsuit and an attorney who represents the lab.

“Imagine that every time a provider is audited, they have to balance out how much they underpaid the provider versus how much they overpaid,” said attorney Stephen Bittinger, with K&L Gates in South Carolina, who represents the plaintiff, Compass Laboratory Services LLC, of Tennessee. “It would dramatically change how audits are performed.”

The government’s general argument is it doesn’t need to include underpayments and zero-paid claims because it’s only looking for overpayments, “but the statute said you should,” Bittinger contended.

If the U.S. District Court for the District of Columbia, where the lawsuit was filed, sides with Compass, the impact could be “immense,” said statistician and auditor Bruce Truitt, a former faculty member of the Medicaid Integrity Institute in Columbia, South Carolina, who is not involved in the case. It could create a “consistent compliance environment” by forcing alignment of the same rules for Medicare program integrity audits and self-audits under the Medicare-Medicaid 60-day rule. The MPIM only applies to Medicare contractors, not providers doing self-audits under the 60-day rule, which requires providers to report and return Medicare and Medicaid overpayments within 60 days of identifying them.

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