

HEALTH CARE LAW UPDATE

October 2006

Hospital Law Issues

The OIG's 2007 Work Plan and Actions Hospitals Should Undertake

The OIG's 2007 Work Plan identifies issues and projects which the OIG believes are crucial to its mission and which will become the primary focus of the OIG's efforts during the 2007 fiscal year.

NEW AREAS TO BE COVERED IN 2007

The Work Plan encompasses twenty-three separate areas of focus for hospitals, as well as many other topics which impact hospitals, such as medical equipment, laboratory services, ambulatory services, Medicare Part D drug benefits, nursing home care, and Medicaid services.

The 2007 Work Plan, while containing many of the same topics which the OIG focused on previously, identifies several new areas of concern which may directly impact hospitals and other healthcare providers. These areas include:

1. Inpatient Dialysis Services: Inpatient dialysis admissions will be reviewed to determine whether the services should be reimbursed by Medicare as "admission to inpatient status" or "admission to observation status." Physicians admitting dialysis patients must clearly state the level of care required in their orders.

2. Hospital Outpatient Department Payments: The OIG will review outpatient Medicare payments to determine the appropriateness of payments for multiple and repeat procedures, and for global surgeries performed in hospital outpatient departments. The OIG will also consider

the extent to which outpatient claims are being improperly "unbundled."

3. Medical Necessity and DRGs: The OIG plans to analyze inpatient hospital claims to identify providers who exhibit high or unusual DRG patterns. It will examine claims submitted by these providers for medical necessity, and appropriate coding levels to ensure that reimbursement is not being increased through upcoding.

4. Inappropriate Payments for Diagnostic X-Rays in Hospital ERs: The OIG will scrutinize diagnostic x-ray claims to assess the extent of inappropriate payments. Emergency room physicians should not bill Medicare separately for interpretations of diagnostic X-rays.

5. Inpatient Laboratory Services: Medicaid laboratory payments will be scrutinized to identify instances of inadequate documentation and improper bundling. Medicaid will specifically focus on improper duplication of chemistry, hematology, and urinalysis tests.

6. Emergency Health Services for Undocumented Aliens: The OIG will review Medicaid payments for services to undocumented aliens to ensure that Medicaid is only paying for services necessary to treat an emergency condition.

7. Disproportionate Share Hospital Payments: DSH payments will be reviewed to analyze whether state payments to individual hospitals exceed the hospitals' uncompensated care costs,

in violation of federal law. The OIG will examine whether states properly determine hospital eligibility for DSH payments.

8. Billing for Medicaid Nursing Home Patients Transferred to Hospitals: The OIG will determine whether Medicaid is making duplicate payments to hospitals and nursing homes for the same patients, and whether hospitals are receiving payments for discharged patients.

9. Long-Term Care Hospitals: The OIG will scrutinize LTCH admissions to ensure that admissions come from a variety of acute care hospitals. If an LTCH receives most of its admissions from a single acute-care hospital it may be effectively functioning as a unit of that hospital and therefore receiving improper Medicare reimbursement.

10. Provider Self-Disclosure: The OIG continues to encourage providers to self-disclose potential violations of Medicare and Medicaid law. Overpayments or billing errors which do not indicate a violation of the law should not be reported to the OIG, but instead brought to the attention of the responsible payor.

Other new areas of OIG focus include: hospital capital payments; inpatient hospital payments for new technologies; oversight of quality of care and staffing at specialty hospitals; erroneous Medicaid payments for transportation between providers; and physician assistant reimbursement.

RECOMMENDED COMPLIANCE ACTIONS

In order to demonstrate that your hospital's compliance program is "effective" and is being updated to address new regulatory issues, we recommend taking the following actions in light of the 2007 Work Plan:

1. Compliance Committee. Convene meetings of your hospital's compliance committee to discuss the OIG's 2007 Work Plan, placing particular emphasis on new OIG focus areas which your hospital has not yet reviewed.

Document these efforts by keeping written minutes of all such meetings.

2. Audits. Initiate internal and/or external audits of some of the areas of OIG focus (especially those that the hospital has not recently audited) to evaluate the hospital's compliance in these areas. Document these efforts thoroughly, by preparing a written summary of the methodology and results of such audits, including any corrective actions taken as a result.

3. Risk Areas. If your compliance program sets forth risk or audit areas, amend it to add new risk areas reflected in the 2007 Work Plan.

4. Dissemination to Management. Send copies of the 2007 Work Plan to members of the hospital's management with a memo explaining its significance. Or follow a more "tailored" approach, by sending hospital management select sections of the 2007 Work Plan, depending on each manager's area of responsibility. Keep copies of all materials distributed.

5. Inservice Hospital Personnel. Conduct seminars for hospital personnel to familiarize them with the applicable areas of the 2007 Work Plan. Document all such efforts.

6. Copies to Physicians. Physicians cognizant of compliance issues in their private practices will be more aware of compliance issues in a hospital setting. Send a copy of the 2007 Work Plan (or just the sections applicable to physicians, on pages 9-12) to every physician on your medical staff along with a letter explaining its significance. Keep copies of all such letters in your Compliance Officer's files.

We send these Updates to our clients and friends to provide information on recent developments in the law. The Updates, however, should not be relied on for legal advice in any particular matter. If you would like additional information, please contact Gary W. Herschman at gherschman@sillscummis.com or at 973-643-5783 or Anjana D. Patel at apatel@sillscummis.com or at 973-643-5097.

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