

HEALTH CARE LAW UPDATE

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Hospital Law Issues

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The OIG's 2008 Work Plan and Proactive Measures Hospitals Should Undertake

The OIG's 2008 Work Plan identifies issues it will focus on during the 2008 fiscal year. This update provides a summary of new areas identified in the Work Plan relating to hospitals and recommends proactive measures hospitals should take as a result.

The Work Plan details 25 separate focus areas for hospitals and evaluates many other areas affecting hospitals, such as laboratory services, ambulatory services, drug benefits, and nursing home care. Some of the OIG's new priorities which impact hospitals include:

1. Medicare DSH Payments: The OIG will evaluate the appropriateness of its additional payments to hospitals with a significantly disproportionate number of low-income Medicare and Medicaid payments. The OIG will analyze whether patient classifications were appropriate and whether extra disproportionate share payments were made to hospitals in accordance with Medicare and/or Medicaid criteria.

2. Medicare Secondary Payer: The OIG will review Medicare payments which should be secondary to insurance coverages held by beneficiaries. The OIG will assess procedures for preventing inappropriate payments for services performed on beneficiaries with other insurance coverage, including evaluating protocols for identifying and resolving credit balance situations.

3. Medicare's Transfer Policy: The OIG will review coding of claims submitted by hospitals to ensure compliance with Medicare's transfer

policy, and will determine whether discharges should have been appropriately coded as transfers.

4. Inpatient Psychiatric Facility ED Adjustments: The OIG will review the appropriateness of payments made to psychiatric facilities that receive adjusted rates because they maintain qualifying emergency departments. The OIG's concern is that these facilities' rates have not been adjusted correctly.

5. Serious Medical Errors: The OIG plans to review the incidence, facility response, and payments associated with serious medical errors coined "never events." The OIG will evaluate medical error reporting and provider responses. This area falls under a new subcategory in the Work Plan called "Medicare Cross-Cutting Issues," which, given the name, will impact many types of providers including hospitals.

6. LTCH Short Term Stay Outliers: The OIG will evaluate payments made for cases discharged from Long Term Care Hospitals ("LTCHs") with lengths of stay well below the average for their DRGs ("short term stay outliers" or "SSOs"). The review will focus on the distribution and payment amounts for SSOs, including cases that only marginally exceeded the SSO threshold.

7. Special Payment Provisions for LTCHs: The OIG will evaluate the appropriateness of special Medicare payment provisions as applied to LTCHs that discharge patients to co-located hospitals. Special payments apply where

the LTCH's discharged population, which was admitted from a co-located hospital, exceeds the regulatory threshold. The OIG will also analyze the appropriateness of special payment provisions as applied to patients who were transferred to onsite providers and readmitted to LTCHs. Special payments apply where an LTCH discharges patients to a co-located provider and directly readmits more than 5% of the total number of its Medicare inpatients discharged from that co-located provider.

8. Provider Bad Debts: Medicare bad debts claimed by acute care inpatient hospitals, LTCHs, inpatient psychiatric facilities, and SNFs will be reviewed to determine whether the bad debts were appropriate under Medicare regulations. The OIG will also examine the bad debts to determine whether recoveries of prior year write-offs were properly used to reduce the cost of beneficiary services for the period in which the recoveries were made.

Other pertinent areas the OIG will evaluate are: Part B Medicare payments to physicians for X-rays in hospital EDs, payments for sleep disorder services, patient care and safety in physician-owned specialty hospitals, physician reassignment of benefits, interventional pain management procedures, and unallowable payments to terminated Medicare providers/suppliers.

RECOMMENDED COMPLIANCE ACTIONS:

In light of the 2008 Work Plan, we recommend the following proactive compliance measures:

1. Compliance Committee: Convene your hospital's compliance committee to discuss the Work Plan, placing particular emphasis on new focus areas not yet reviewed. Document these efforts by keeping written minutes.

2. Audits: Initiate internal and/or external audits of selected 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.

3. Risk Areas: If your compliance program sets forth risk or audit areas, amend it to add new risk areas reflected in the 2008 Work Plan.

4. Dissemination to Management: Send copies of the 2008 Work Plan to members of the hospital's management with a memo explaining its significance, or send appropriate segments of the Work Plan to various hospital managers based on their management job duties and the relevancy of the segments. Keep copies of all such memos distributed to hospital personnel.

5. In-Service Hospital Personnel: Conduct seminars for hospital personnel to familiarize them with the applicable areas of the 2008 Work Plan. Document all such efforts.

6. Copies to Physicians: Disseminate copies of the Work Plan, or its relevant portions, to all medical staff physicians with a letter explaining the significance of the Work Plan or the relevant sections. Retain copies of all such communications.

7. Seminars for Physicians: Offer seminars for physicians on relevant issues identified by the OIG. Document these efforts.

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 973-643-5783 or Anjana D. Patel at 973-643-5097.

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