

Strategies for Compliance: Addressing Concerns in the 2008 OIG Work Plan

Keeping up with the variety of complex, evolving compliance issues in the health care industry can seem to be a staggering task. However, addressing potential compliance issues before they become actual compliance concerns is well worth the effort. Every year, the Office of the Inspector General (OIG) identifies the areas "most worthy of its attention" in its Work Plan for the following fiscal year. The OIG is a federal agency within the Department of Health and Human Services (HHS) that investigates potential Medicare and Medicaid fraud and abuse. As such, its selection of issues for the Work Plan can indicate the compliance issues it views as particularly important (although the OIG may have other reasons for listing an item in the Work Plan). By proactively addressing the issues raised in the Work Plan and other OIG guidance, health care providers can head off potential compliance issues before they become real problems.

The OIG Work Plan for Fiscal Year 2008 identifies more than 300 areas of concern within HHS.¹ Some of these concerns are specific to certain provider types (e.g. hospitals or nursing homes), while others apply more broadly to all Medicare or Medicaid providers. It is worthwhile to read the relevant portions of the Work Plan in their entirety, but the following summary highlights some of the important issues raised in the 2008 Work Plan.

1. Areas of Concern for Hospitals and Health Systems

- Provider Bad Debts. The OIG will be reviewing Medicare bad debts claimed by hospitals, as well as other providers, such as inpatient rehabilitation facilities, inpatient psychiatric facilities and skilled nursing facilities, to determine whether the debts were reimbursable. Uncollected debts may only be claimed as Medicare "bad debt" if specific criteria are met.² Even if a debt meets the criteria for an allowable bad debt, hospitals and other providers must have procedures in place to ensure that Medicare is properly credited if the debt is subsequently collected. Hospitals should ensure that their policies and procedures accurately identify the debts that can be claimed as bad debts and how to credit Medicare when bad debts are subsequently collected.
- Medicare Disproportionate Share (DSH) Payments. Noting that Medicare DSH payments have been steadily increasing, and that there have been

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significant overpayments in this area, the OIG stated that it will review whether hospitals are appropriately claiming Medicare DSH payments.

- Inpatient Prospective System Wage Indices. The OIG previously found that a substantial amount of the wage data reported by hospitals had been misreported. Accurate reporting of wage data is necessary to calculate the wage index, and the OIG will be examining whether hospitals have complied with reporting requirements.
- Payments for Diagnostic X-Rays in Hospital Emergency Departments. As part of continuing concerns regarding potential overuse of diagnostic imaging services, the OIG will review a sample of Medicare Part B claims for diagnostic x-rays performed in emergency departments to determine whether the payments for these services were proper.
- Laboratory Services for Inpatients. The OIG is concerned that Medicare is being billed for laboratory services provided to hospital inpatients that are already included in the hospital's payment and should not be separately billed. It will review Medicare Part B payments for such services to determine whether they were appropriate.
- Transfers. The OIG will review whether hospitals have incorrectly coded transfers of Medicare beneficiaries to other facilities as discharges. Hospitals should ensure that transfers are being appropriately coded.
- Capital Payments. In addition to determining whether hospitals are complying with capital payment regulations,³ the OIG will be reviewing whether the current methodology used to update capital payment rates is appropriate.
- Graduate Medical Education Payments. The OIG will review whether fiscal intermediaries are appropriately making adjustments for direct and indirect graduate medical education.

2. Areas of Concern for Long Term Care and Hospice Providers

- Skilled Nursing Facility (SNF) Cost Reports. The OIG will examine whether nursing facilities' cost reports comply with Medicare reporting requirements, as well as whether the Centers for Medicare and Medicaid Services (CMS) is appropriately monitoring nursing facility cost reports.
- SNF Consolidated Billing. The OIG remains concerned that SNF

consolidated billing rules are not being followed, and will review Medicare Part B claims submitted by suppliers for items or services provided to beneficiaries during Part A-covered SNF stays.

- Hospice Care Provided to Nursing Home Residents. Hospice care provided to nursing home residents continues to be a target of scrutiny. Observing that significant growth in the Medicare hospice benefit has been fueled by nursing home residents, the OIG stated that it will review the medical records of selected beneficiaries residing in nursing homes to determine whether these beneficiaries are receiving services that are consistent with their plans of care. Previous OIG reports have found that hospice beneficiaries residing in nursing homes received fewer services than those who did not.
- Psychotherapy Services. The OIG will examine the medical necessity of Medicare Part B payments for psychotherapy services provided to nursing home residents in noncovered Part A stays. It will also review whether the coding for these services was appropriate and whether nursing homes adequately documented the services.
- Nursing Home Patients Transferred to Hospitals. The OIG will review whether Medicaid made duplicate payments for patients who were transferred from nursing homes to hospitals.

3. Other Areas of Concern

- "Never Events". The OIG will study the incidences of "never events" among Medicare beneficiaries, including the facility's response to the event, the payments that were associated with the events, and whether current state or voluntary reporting systems for never events are effective. "Never events" are serious medical errors which are preventable and should never occur (e.g. operating on the wrong side of a patient). There has been a recent movement to adopt "no-charge" policies when these events occur, which has been supported by the American Hospital Association, and a growing number of private insurers. Some state Medicaid agencies have announced that they will not pay for these events. The OIG's study will be reported to Congress and will allow the OIG to weigh in on whether Congress or CMS should adopt a non-payment policy as well.
- Issues Related to Clinical Trials. The Work Plan contained a number of

items related to conducting clinical research trials. Among other issues, the OIG stated that it will examine whether or not conflicts of interests are appropriately being monitored. The OIG will focus on financial conflicts of interest that are reported to the National Institutes of Health (NIH), and will assess NIH's oversight of potential financial conflicts of interest. Additionally, the OIG indicated it will review whether Data and Safety Monitoring Boards (DSMBs) are being utilized in compliance with NIH policy.

- Pricing of Clinical Lab Tests. The OIG will compare Medicare payments for lab tests to the rates paid by other federal, state, and private payers. Previously, the OIG has found that Medicare paid significantly higher prices than other payers for some laboratory tests.
- Ambulatory Surgery Center (ASC) Payments. The ASC payment system has recently been revised, and the OIG will be reviewing whether the payment rates are appropriate.

The OIG Work Plan offers a brief snapshot of some of the current issues that the OIG intends to address. Another helpful OIG publication is the *OIG Semiannual Report to Congress*, which summarizes some of the actions the OIG has recently taken. By reviewing the government's enforcement policies and actual practices, health care providers can understand the current enforcement climate and avoid traps for the unwary. If you have questions regarding the issues raised in the 2008 OIG Work Plan, or other health care compliance issues and how they may affect your health care business, please feel free to contact one of Reinhart's health care attorneys.

¹ The complete 2008 Work Plan can be found online at http://oig.hhs.gov/publications/docs/workplan/2008/Work_Plan_FY_2008.pdf.

² See 42 C.F.R. § 413.89.

³ See 42 C.F.R. § 412.308.

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