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OIG Work Plan Will Examine Physician Practice Billing, Attorney Says

The Department of Health and Human Services Office of Inspector General will focus some of its work in 2013 on determining the effects of nonhospital-owned physician practices billing Medicare as hospital-based physician practices, a new topic for the agency and one compliance officials in an Oct. 22 webinar said they were concerned about.

The agency's *Work Plan for Fiscal Year 2013* highlighted several new areas of concern surrounding hospitals, including payments for mechanical ventilation, payments for canceled surgical procedures, and compliance with Medicare's patient transfer policy, all of which are under OIG review, with reports expected to be issued in FY 2013 (191 HCDR, 10/3/12).

The webinar, sponsored by the Health Care Compliance Association, focused solely on the aspects of the work plan related to hospitals. As experts explained the hospital issues OIG plans to address, compliance officials focused most of their technical questions about the enforcement of nonhospital providers billing as if they were part of hospitals.

OIG in its work plan said it will determine the extent to which practices using the hospital-, or provider-based status met the billing requirements of the Centers for Medicare & Medicaid Services. According to OIG, provider-based status allows a subordinate facility to bill as part of the main provider. Provider-based status can result in additional Medicare payments for services furnished at provider-based facilities and may also increase beneficiaries' coinsurance liabilities.

Lewis Morris, an attorney at Adelman, Sheff & Smith in Annapolis, Md., did not dismiss the concerns of the webinar listeners. He noted, however, that just because OIG is addressing a project for the first time in a work plan does not mean it has not been discussed previously within the agency or elsewhere. For example, the Medicare Payment Advisory Commission (MedPAC) in 2011 expressed concerns about the financial incentives presented by provider-based status and stated that Medicare should seek to pay similar amounts for similar services.

MedPAC noted that higher payments for provider-based departments are appropriate because of the increased costs hospitals incur. According to the commission, hospitals have been increasing employment of physicians, and services are likely to shift from freestanding physician practices to hospital outpatient departments (HOPDs). The problem, commissioners agreed, is that payments under the hospital outpatient prospective payment system are typically much higher than the physician fee schedule rates (51 HCDR, 3/16/12).

Increasing Use of Predictive Analytical Data.

Morris said the overall theme of the OIG work plan that should trigger the attention of compliance officials is the increasing use by the agency of predictive analytical data. The work plan projects are examples of “how OIG is using data in a creative way. It allows them to cast a broader net and look at” multiple issues at the same time, he said. He also said it can allow them to better identify outliers across the health care spectrum, not just those related to technical payments.

The emerging use of technology, Morris said, “is not a passing fad.” In a follow-up interview, he told BNA that hospital compliance officers should be looking at the same data as the OIG, “not to anticipate a particular audit, because you can't. But if the government is looking at your data, you should, too.”

He said following the work plan itself is not enough to form a comprehensive compliance program, and data should be used to “understand your unique risks” and the “new and emerging issues” unique to a particular hospital.