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Alerts

Significant Hospital Related Mid-Year Updated OIG Review Activities

June 23, 2016
Health Care Alert

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This is the second of three alerts discussing the mid-year update to the Fiscal Year 2016 Work Plan issued by the Office of Inspector General (OIG). In the first alert we discussed the top management performance challenges facing the Department of Health and Human Services (HHS). This alert and the one to follow will discuss specific review activities the OIG will undertake, presumably designed to help HHS address the management and performance challenges in its oversight of hospitals and other providers of care.

Oversight of Hospital Activities

The OIG has listed several activities and reviews of hospitals which it plans to conduct. Among the most notable are the following:

1. *Provider Based Status.* Provider-based status permits facilities owned and operated by hospitals to bill as a hospital outpatient department. In certain situations, this may result in higher Medicare payment for services furnished at a provider-based facility and thus may increase cost to the Medicare program. The Medicare Payment Advisory Commission (MEDPAC) has expressed concerns about the financial incentives presented by provider-based status and has indicated that Medicare should seek to pay similar amounts for similar services. The OIG will determine the number of provider-based facilities in hospitals and will review CMS's oversight of provider-based billings. As part of its review, OIG will review and compare Medicare payments for physician office visits in provider-based clinics and freestanding clinics to determine the difference in payments made to the clinics for similar procedures.
2. *Outlier Payments*. The OIG will determine the amount of potential Medicare savings if hospital outpatient stays were ineligible for an outlier payment. The purpose of the additional payment, known as an "outlier payment," is to insure beneficiary access to services by having the Medicare program share in the financial loss incurred by a provider associated with extraordinary individual cases. Early OIG reports concluded that hospitals' high charges unrelated to cost have led to significant outlier payments.
3. *Intensity – Modulated Radiation Therapy*. The OIG will review Medicare outpatient payments for Intensity-Modulated Radiation Therapy (IMRT) to determine whether payments were made in accordance with federal requirements. IMRT is a form of high precision radio therapy that uses computer-controlled linear accelerators to deliver precise radiation doses to

a malignant tumor or other specific area. Prior OIG reviews identified hospitals that have incorrectly billed for IMRT.

4. *Comparisons of Salaries to Various Benchmarks* The Center for Medicare/Medicaid Services will review data from the Medicare cost reports of hospitals to identify salary amounts included in the operating costs reported to Medicare. OIG will analyze the amounts of salaries included in the Medicare cost reports, report on the range of salaries, and determine the cost savings that could be achieved at various federal compensation benchmarks.
5. *Two-Midnight Rule*. Under the two-midnight rule, it is generally appropriate to admit a patient to an inpatient facility if it is expected the patient will be in the hospital at least two midnights. Otherwise, the patient should be treated as an outpatient. The OIG will compare claims for hospital stays in the year prior to and the year following the effective date of the rule to review how hospitals' use of outpatient and inpatient stays may change.
6. *Defective Medical Devices*. The OIG will review Medicare claims to identify the costs resulting from additional use of medical services associated with defective medical devices. In doing this review, the OIG will also determine whether Medicare payments for replaced medical devices were made in accordance with Medicare requirements. Federal regulations require reductions in Medicare payments for replacement of implanted devices.
7. *HIPAA*. The OIG will determine the extent to which hospitals comply with contingency planning requirements of the Health Insurance Portability and Accountability Act (HIPAA). They will compare hospital contingency plans with government-recommended practices. The HIPAA Security Rule requires covered entities to have a contingency plan that establishes policies and procedures for responding to an emergency or other occurrence that damages systems containing protected health information in electronic form.

These are some of the areas for hospitals that will be reviewed by the OIG and/or continue to be reviewed by the OIG in the short-term. We will soon issue a third alert regarding the OIG's mid- year update regarding nursing homes, hospices, home health services, medical equipment and supplies and other providers of services. For further information you may contact Roy Bossen, Stephen Moore or your regular Hinshaw attorney.