

# HEALTH LAW

## Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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## Highlights For Medicare Providers In The OIG's 2007 Work Plan

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The Office of Inspector General of the Department of Health and Human Services (the "OIG") issues an annual Work Plan in order to promote improvement in the efficiency and effectiveness of federal healthcare programs. The Work Plan reflects those areas that the OIG considers vulnerable to fraud and abuse, thus providing a road map to the OIG's expected areas of investigation for the upcoming fiscal year. While the Work Plan spans a broad range of federal healthcare programs, this summary focuses on significant areas of investigation that are particular to Medicare providers for fiscal year 2007.

### **Hospitals**

Payment for New Technologies. Inpatient hospital payments made for new services and technologies will be reviewed to determine whether the clinical definition of "new" demonstrates the procedure to be inadequately paid otherwise under the DRG system. Facilities can receive an "add-on payment" for new technologies and services if they meet certain criteria for "newness", and if the DRG system inadequately compensates providers for the new technology.

Outsourced Hospital Departments. The structure of financial arrangements between a supplier, such as a laboratory or DME company, and a hospital for the purposes of outsourcing a hospital department or service line will be scrutinized. The OIG intends to determine whether these arrangements are "having an effect" on the Medicare program. This provision is significant because outsourcing of hospital functions such as laboratory and pharmacy is relatively common.

Inpatient rehabilitation facilities will be the focus of several investigative reviews. The OIG will be reviewing the extent to which admissions to inpatient rehabilitation facilities meet specific regulatory requirements and whether Medicare is billed for services in compliance with Medicare regulations. Payments to inpatient rehabilitation facilities will be scrutinized to determine whether a claim paid as a discharge should have been paid as a transfer. Outlier claims will also be subject to more intensive scrutiny.

Dialysis services will be scrutinized. In particular, the OIG will be reviewing payments made for inpatient admissions for dialysis services when the physicians' order is for admission to observation status.

Long term care hospital classifications will be reviewed to ensure compliance with the average length of stay criteria. DRG coding continues to be an area of particular concern.

### **Nursing Homes**

The OIG will focus on the medical necessity of and excessive billing for rehabilitation services, infusion therapy services, imaging services, laboratory services and psychotherapy services provided to nursing home residents, as well as the medical necessity of consecutive inpatient stays. Additionally, skilled nursing facility payments will be reviewed to determine whether Medicare has been inappropriately paying facilities for services provided on the day of discharge.

### **Hospice**

The OIG is focusing on two primary areas of concern for Medicare hospices, including whether hospice payments for services for dually eligible residents residing in nursing facilities are accurate and whether assessments and plans of care correctly reflect the conditions of beneficiaries receiving hospice care.

### **Physicians and Other Health Professionals**

Billing Service Companies. The OIG will identify the types of arrangements that physicians and other Medicare providers have with billing service companies in order to determine the impact of these arrangements on physicians' billings. Presumably, the OIG will be looking at methods of compensating billing companies as part of this review.

Place of Service (POS) Errors. The OIG will review whether physicians properly coded the place of service on claims for services provided in ambulatory surgical centers and hospital outpatient departments. Medicare regulations provide for different levels of payments to physicians depending on where the service is performed. Medicare makes higher payments for physician office services than for services performed in a facility setting.

Particular Service Lines. The following services lines will be subject to additional scrutiny this year under the Work Plan: pathology services; cardiography and echocardiography services; physical and occupational therapy services; preventive physical examination services; Part B mental health services provided in physicians' offices; wound care services; eye surgeries; polysomnography services; "incident to" services; evaluation and management (E&M) services provided during global surgery periods; long distance physician claims for home health and SNF patients; and advanced imaging services in physician offices. The OIG will be reviewing the above-referenced service lines for appropriateness, proper billing, medical necessity and self-referral implications.

Additionally, psychiatric services provided in an inpatient setting will be reviewed for proper billing (including potentially billing for an individual therapy session when a group therapy session was provided). The OIG will also scrutinize any billing of beneficiaries in excess of the Medicare allowed amount, as well as outsourcing by physician groups to supplier entities such as DME companies and laboratory companies (as mentioned above, the OIG is also studying this issue with respect to hospitals).

## Medical Equipment and Supplies

The necessity and reasonableness of Medicare payments for durable medical equipment such as power wheelchairs, therapeutic footwear, orthotics, wound care equipment, and supplies will be scrutinized. Further, DME suppliers that file claims with ZX, KX and KS modifiers will be reviewed for whether the claims are appropriately billed to Medicare (such modifiers indicate that the DME supplier has appropriate documentation on file and will provide it upon request).

If you have any questions about these new regulations, please contact any of the attorneys in our Health Law Practice Area listed below.

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