

# Health Law Bulletin

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## OIG Has Its Sights Set On Certain Providers and Procedures

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Each year, the federal Department of Health and Human Services Office of Inspector General (OIG) publishes a work plan. That work plan lays out the OIG's priorities for the coming year and the kinds of things it will focus on during the year. Although fiscal year 2009 is almost over, it is useful to look at some of the 2009 priorities for two reasons: (1) It gives you an idea of the kinds of things the OIG looks at; and (2) some priorities are ongoing and will carry over into 2010.

Obviously, these are not the only areas in which the OIG could investigate a provider. But given the new audit contractors starting their work that we have discussed in previous bulletins, you would be well-served to be sure you are in compliance on all of these issues that apply to you or your practice.

- **Hospital compliance with EMTALA**—OIG is reviewing the Center for Medicare and Medicaid Services' (CMS) oversight of compliance with the Emergency Medical Treatment and Labor Act of 1986 (EMTALA). A previous audit indicated that CMS was not promptly investigating EMTALA complaints and inadequately providing feedback to hospitals. OIG will look at regional variations in complaints and examine CMS's methods for enforcement and tracking compliance with EMTALA.
- **Payments for diagnostic x-rays in hospital emergency departments**—As a result of concerns by the Medicare Payment Advisory Commission, the OIG is going to review a sample of Part B claims for diagnostic x-rays performed in hospital emergency rooms. Specifically, the OIG will be looking at the appropriateness of payments for diagnostic x-rays and interpretations.
- **Part B Services in Nursing Homes: Mental Health Needs and Psychotherapy Services**—The OIG will review the appropriateness and medical necessity of mental health services paid by Medicare for residents of skilled nursing facilities.
- **Medicare Hospice Care for Nursing Home Residents: Services and Appropriate Payments**—The OIG will review a sample of medical records of patients receiving hospice care while residing in a nursing facility. The OIG will determine whether the services received are consistent with the plans of care and whether the payments made by Medicare are appropriate.
- **Physicians' Medicare Services Performed by Nonphysicians**—Medicare allows non-physicians to perform some services "incident to" the physician service. The OIG is concerned that "incident to" services may be overutilized or beneficiaries may be at risk of receiving care that

does not meet professionally recognized standards. The OIG will examine the qualifications of the non-physician practitioners providing the services and assess whether their qualifications are consistent with professionally recognized standards of care.

- **Medicare Payment for Chemotherapy Drug Administration Services**—The OIG will review why payments for chemotherapy services have increased at a much higher rate than the growth in claims for the chemotherapy drugs themselves.
- **Provider Eligibility for Medicaid Reimbursement**—Certain providers must meet Medicare standards in order to participate in Medicaid. The OIG has previously identified Medicaid payments to providers that did not meet the Medicare requirements, yet they still received Medicaid payments.
- **Medicaid Payments to Continuing Day Treatment Providers**—According to the OIG, in one state, the Medicaid day treatment providers could not document half of the hours that were billed and paid. At this time, the OIG plans to review that one unnamed state. However, if they find problems there, this issue could come back in the 2010 plan.
- **Medicaid Payments for Personal Care Services**—The OIG will review Medicaid payments for personal care services to ensure the services are provided in accordance with a physician-approved plan of treatment and to ensure that the services are provided only in allowable settings.
- **State and Federal Oversight of Home- and Community-Based Services**—As a result of a 2003 review, which found that states and CMS were not providing adequate oversight of home- and community-based service waivers, the OIG is going to review state compliance with federal regulations for these programs and CMS's process for monitoring compliance by the states.
- **Medicaid Dental Services**—The OIG will review Medicaid payments for dental services to ensure that the services and payments comply with federal requirements for these services.
- **Providers Billing More Time Than Is Feasible in a Day**—The OIG will review physician Medicaid services to determine whether claims are being submitted for more time than is feasible in a single day.
- **Medicare and Medicaid: Security of Portable Devices Containing Personal Health Information at Contractors and Hospitals**—The OIG will review security controls of contractors and hospitals to prevent the loss of Protected Health Information stored on portable devices and media such as laptops, jump drives, and backup tapes.
- **Medicare and Medicaid Health Information Data Security and Privacy**—The OIG will review CMS's oversight of the HIPAA Security Rule. They will also review various HIPAA-covered Medicare providers' compliance with the HIPAA Privacy Rule requirements.

The OIG work plan also addresses Durable Medical Equipment providers, Medicare Parts C and D, Home Health Agencies, and Medicare and Medicaid administration, as well as other topics. A complete copy of the plan is online at <http://www.oig.hhs.gov/publications/docs/workplan/2009/WorkPlanFY2009.pdf>. It is important to be apprised of these issues because when the OIG is focused on an issue, it is likely that Medicare and Medicaid and their contractors are focused on it as well.