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Successful Medicare physicians: Beware of targeted reviews

--By Alan E. Reider, Arnold & Porter LLP

From international law firm Arnold & Porter LLP comes timely views on current regulatory and legislative topics that weigh on the minds of today's physicians and health care executives.

A report issued by the HHS Office of the Inspector General in December 2013 should put successful physicians with large Medicare practices on notice: the government is watching. For many years it has been presumed that high-volume practitioners are more likely than others to be subject to government scrutiny. Fairly or unfairly, the Medicare program is inherently suspicious of practices that generate a high volume of Medicare payment. Further, if problems are identified with a high-volume practitioner, and an overpayment is identified, the recovery will likely be greater.

A report entitled "Reviews of Clinicians Associated with High Cumulative Payments Could Improve Medicare Program Integrity Efforts" eliminates any question that high-volume physician are targets for review. In it the OIG identified 303 clinicians, each of whom received more than \$3 million in Part B payments during calendar year 2009. Three specialty groups represented more than 75% of these high-volume clinicians: internal medicine (55%), radiation oncology (12%), and ophthalmology (11%).

According to the OIG, 104 of these clinicians (34%) had been identified by Medicare Zone Program Integrity Contractors (ZPICs) for improper payment reviews, suggesting a high proportion of questionable conduct. Yet upon a closer reading of the report, it appears that the findings do not support such a conclusion. Of the clinicians identified, 24 of the reviews had not been completed, and ZPICs closed reviews of 48 of the clinicians without any findings. In fact, of the remaining 32 physicians, only 13 were assessed with an overpayment. In other words, 13 of 303 physicians (4.3%) were subject to an overpayment demand letter. Further, there is no information offered as to whether these overpayments were challenged and, if so, what were the results. The OIG report also notes that these 303 clinicians were responsible for Medicare payments totaling \$1.28 billion during 2009. The total amount of overpayments assessed against the 13 physicians, however, was only \$34 million, or 2.65% of the total payments made to the 303 high-volume physicians.

Armed with these findings, the OIG has recommended to CMS that it establish a cumulative payment threshold above which a clinician's claims would be selected for review and that CMS implement a procedure for identification and review of these selected clinicians' claims.

The fact that barely 4% of high-volume clinicians warranted an overpayment demand totaling 2.65% of the total payments made is, perhaps, the most remarkable finding of all. Given the complex regulatory framework of the Medicare program, and the struggles of physicians to understand coverage and reimbursement policies, the results of this review suggest that high-volume physicians are acting in an extraordinarily compliant manner. Nevertheless, high-volume clinicians should continue to be vigilant about their billing practices. With increasing pressure to control costs, Medicare would rather spend its resources targeting those physicians from whom a potential large overpayment recovery can be obtained.

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