

## *OIG Announces its FY 2010 Work Plan*

On October 1, 2009, the Office of the Inspector General (OIG) released its work plan for the 2010 fiscal year.<sup>1</sup> The OIG issues an annual work plan which details enforcement activities that it plans to initiate or continue to pursue, and reviews programs and operations of the Department of Health and Human Services.<sup>2</sup> The 2010 Work Plan includes reviews of and proposed changes to Medicare (Parts A, B, C, and D), Medicaid, and an additional section on the programs and efforts related to American Recovery and Reinvestment Act.<sup>3</sup> Discussed below are several highlights of the 114-page Work Plan.

Under Medicare Part A and B, the OIG is reviewing the appropriateness of capital payments made to hospitals per discharge to defray the cost of equipment, facilities, and other capital-related costs.<sup>4</sup> These payments are based on such factors as the average capital cost per discharge, DRG weight, geographic adjustment factors, urban/rural location, indirect medical education, whether the hospital serves a disproportionate share of low-income patients, and any claimed outlier costs.<sup>5</sup>

The OIG will also continue to review provider-based status for inpatient and outpatient facilities.<sup>6</sup> Under the provider-based status rules, hospitals can operate as single entities while owning separate provider-based facilities, locations, or departments. This could allow the hospital to benefit from increased reimbursement by including the costs of a provider-based entity on their cost report and a provider-based freestanding facility could benefit from eligibility for some of the enhanced payments that a hospital receives, such as disproportionate share payments, upper limit payments, or graduate medical education payments.<sup>7</sup> The OIG will also be ensuring that critical access hospitals (CAHs) comply with the criteria and conditions for eligibility in the program that qualifies them for 101% of the cost of providing services; the result of cost reimbursement plus enhanced physician reimbursement.<sup>8</sup>

The OIG will also be reviewing certain types of hospital-reported data. In particular, the accuracy of data on hospital wages based on the Inpatient Prospective Payment System (IPPS) under Part A will be reviewed, due to the fact that the OIG has discovered hundreds of millions of dollars misreported in recent years.<sup>9</sup> Additionally, the OIG intends to review the reliability of hospital-reported quality measure data, which is required

to be reported on ten quality measure indicators established by the Secretary of HHS. If the quality data is incorrect, hospitals risk having their Medicare payments reduced by two percent.<sup>10</sup> To ensure further that quality standards are being met, the OIG will also review same-day hospital readmissions, adverse events such as never events or serious reportable events, and the number of Medicare claims based on conditions that were present on admission (POA), since hospitals receive lower reimbursement for certain diagnoses that were acquired in the hospital.<sup>11</sup>

With respect to reimbursement for inpatient hospital services under the Medicare IPPS, the OIG intends to review the proper use of coding changes to reflect severity of diagnoses with MS-DRG codes. The Medicare Severity Diagnosis Related Group (MS-DRG) system was implemented in 2005 to more appropriately reflect the severity and resource consumption of particular diagnoses.<sup>12</sup>

Also being reviewed is the appropriateness of disproportionate share (DSH) payments (which have been steadily increasing in recent years) under both Medicare and Medicaid,<sup>13</sup> and bad debt claims under Medicare.<sup>14</sup> Also, amidst increased scrutiny and proposed payment restructuring of diagnostic imaging utilization, the OIG will be reviewing payments made for diagnostic X-rays and interpretations performed in hospital emergency rooms.<sup>15</sup>

Additionally, the OIG will be reviewing several issues regarding Medicare Part B payments to Home Health Agencies (HHA). These include scrutiny of payments for outlier costs, diabetes self-management training, and insulin injections, among others.<sup>16</sup> OIG will conduct an analysis of Home Health Agency profitability trends to determine whether the payment system for home health should be adjusted, as HHA spending has significantly increased since the introduction of the current prospective payment system.<sup>17</sup> Relatedly, OIG will be reviewing payments made for durable medical equipment and ensuring these payments comply with physician self-referral restrictions.<sup>18</sup>

Of particular note for physicians affiliated with ambulatory surgery centers (ASCs), the OIG intends to review physician coding relevant to place-of-service, in order to determine whether physicians have been

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inappropriately coding services to indicate that they have been performed in their offices rather than an ASC or a hospital outpatient department, as office-based reimbursement rates are generally higher.<sup>19</sup>

Additionally, Medicare Part B payments for physicians performing imaging services will also come under scrutiny, and in some cases, the OIG will review practice expense components, such as utilization rates, for appropriateness.<sup>20</sup> With regard to independent diagnostic testing facilities (IDTFs), the OIG intends to review CMS' Medicare enrollment standards for IDTFs to ensure that they comply with all 14 CMS standards,<sup>21</sup> including CMS' interpretation of prohibitions on space-sharing.<sup>22</sup>

Multiple Part B prescription drug payment issues are also going to be reviewed, including comparing pricing of drugs to relevant market prices and average manufacturer prices, general for immunosuppressive drugs, payments for off-label anticancer pharmaceuticals, and fraud issues arising out of the prescription of the inhalation drug budesonide in South Florida.<sup>23</sup> Further, the OIG intends to also review duplicate claims for prescription drugs arising under Medicare Part A/B and Part D, as well as other Part D issues related to Medicare Advantage, pharmacy benefit managers, e-prescribing, and manufacturer rebates and costs paid to Plan Sponsors under generic programs.<sup>24</sup> The OIG also plans to review various issues relevant to prescription drug payments under Medicaid, to ensure that states are operating their prescription drug programs appropriately under Medicaid and CHIP.<sup>25</sup>

With the recent focus on effective use of health information technology (HIT), the OIG also intends to review the extent to which CMS standards for electronic prescribing (e-prescribing) under Part D have been implemented by providers and pharmacists.<sup>26</sup> With regard to Part B, the OIG will also review 2010 incentive payments made under Medicare to providers engaged in electronic prescribing (e-prescribing) activities in 2009 to determine these payments were made appropriately to "successful electronic prescribers". Per the standards set by CMS, a "successful electronic prescriber" is a provider who "report[s] on CMS' e-prescribing quality measure with respect to at least 50 percent of cases in which services

are billed to Medicare Part B."<sup>27</sup>

Further, the OIG intends to review the CMS work plan relevant to EHR implementation incentives under the American Recovery and Reinvestment Act (ARRA) of 2009. Under the Act, Medicare and Medicaid providers are entitled to incentives if they properly implement EHR systems into their practices so that such systems have "meaningful use" over the next few years.<sup>28</sup> However, providers are not entitled to incentives from both Medicare and Medicaid, and since the incentive program is estimated to cost around \$30 billion without duplicative payments, the OIG intends to review CMS' plans to ensure that providers are only receiving payments from one source.<sup>29</sup> The OIG also intends to ensure that EHR systems are sufficiently secure to comply with HIPAA regulations, as mandated by the ARRA.<sup>30</sup>

This discussion of the FY 2010 Work Plan has merely highlighted the OIG's plan for the year. To review the entire Work Plan, it can be accessed through the website of the Office of the Inspector General, at: [http://oig.hhs.gov/publications/docs/workplan/2010/Work\\_Plan\\_FY\\_2010.pdf](http://oig.hhs.gov/publications/docs/workplan/2010/Work_Plan_FY_2010.pdf).

<sup>1</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009.

<sup>2</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. i.

<sup>3</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. pp. v-xii.

<sup>4</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 3.

<sup>5</sup> 42 CFR 412.308; 42 CFR 412.312

<sup>6</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 3.

<sup>7</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 3.

<sup>8</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. pp. 4-5; "OIG FY 2010 Work Plan Builds on Existing Priorities; Adds Stimulus Funds Projects," Legal News Alert, Foley & Lardner LLP, October 2009, p. 1.

<sup>9</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 3.

<sup>10</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 6.

<sup>11</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. pp. 6-8.

<sup>12</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 9.

<sup>13</sup> "Work Plan FY 2010" Office of the Inspector General. US Dept. of

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Health and Human Services. Oct. 1, 2009. p. 14, 43.

<sup>14</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 5.

<sup>15</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 8.

<sup>16</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. pp. 9-11.

<sup>17</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 11.

<sup>18</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 20.

<sup>19</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 15.

<sup>20</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 15.

<sup>21</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 17.

<sup>22</sup> “OIG FY 2010 Work Plan Builds on Existing Priorities; Adds Stimulus Funds Projects,” Legal News Alert, Foley & Lardner LLP, October 2009, p. 4.

<sup>23</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 24-26.

<sup>24</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 34-41.

<sup>25</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 48-54.

<sup>26</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 38.

<sup>27</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 14.

<sup>28</sup> “Health Information Technology for Economic and Clinical Health,” found in “American Recovery and Reinvestment Act of 2009,” Pub. L. No. 111-5 (Feb. 7, 2009), Title XIII.

<sup>29</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. pp. 98-99.

<sup>30</sup> “Work Plan FY 2010” Office of the Inspector General. US Dept. of Health and Human Services. Oct. 1, 2009. p. 95; “Health Information Technology for Economic and Clinical Health,” found in “American Recovery and Reinvestment Act of 2009,” Pub. L. No. 111-5 (Feb. 7, 2009), Title XIII.



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