

## OIG Releases 2017 Work Plan

In early November 2016, the *Office of Inspector General* (OIG) of the U.S. *Department of Health & Human Services* (HHS) released its yearly *Work Plan* (WP) for 2017.<sup>1</sup> The OIG prepares this document by assessing the relative risks in HHS programs and operations, and consequently prioritizing the sequence and proportion of resources allocated.<sup>2</sup> The 2017 WP describes new or revised OIG audits and evaluations that are underway or have been planned since April 2016, and removes items from the 2016 WP that have been completed, postponed, or canceled.<sup>3</sup> It further discusses certain legal and investigative initiatives within the OIG and among its affiliated departments.<sup>4</sup> The OIG stated in its WP that developing the plan is an ongoing process that may be updated throughout the coming year whenever necessary, meaning that the priorities of the OIG could change from what they have currently listed.<sup>5</sup> This article will highlight the key changes in the plan and continued areas of focus for the OIG; and identify particular areas of concern for healthcare organizations in developing and maintaining regulatory compliance, especially with regard to issues of compensation, billing, and funding.

Medicare Part A covers certain inpatient services in hospitals and skilled nursing facilities, as well as some home health services, while Medicare Part B covers designated practitioners services, outpatient care, and certain other medical services, equipment, supplies, and drugs that Part A does not cover.<sup>6</sup> In calendar year 2015, Medicare Parts A and B made approximately \$371 billion in program payments, providing a strong basis for the OIG to focus its Medicare and Medicaid oversight efforts on reducing improper payments, fostering economical payment policies, and preventing and deterring fraud.<sup>7</sup> Healthcare organizations should pay particular attention to the OIG's plans to review the following initiatives, due to either the novelty of the scrutiny or the high potential for violations:

- (1) Disproportionate share hospital payments for Medicaid patient days;
- (2) Inpatient psychiatric facility compliance with outlier payments;
- (3) Skilled nursing facilities by reviewing abuse and neglect reports;
- (4) Reimbursement for therapy services actually provided;
- (5) Provider reimbursement of hyperbaric oxygen therapy services;

- (6) Hospices' compliance with Medicare requirements and required on-site nurse visits; and,
- (7) Review of outlier payment issues, post-acute care, and hospitals' use of outpatient and inpatient stays under the *two-midnight rule*.<sup>8</sup>

Moreover, for medical equipment and other providers and suppliers reimbursed through Medicare Parts A and B, the OIG plans to pursue a variety of new initiatives, including reviews of:

- (1) Reimbursement for durable medical equipment, prosthetics, and supplies provided during non-Medicare Part A nursing home stays;
- (2) Positive airway pressure device supplier compliance;
- (3) Medicare payments for clinical diagnostic laboratory tests, transitional care management, and chronic care management;
- (4) Drug waste from single-use vial drugs; and,
- (5) Potential savings from inflation-based rebates in Medicare Part B.<sup>9</sup>

The OIG stated that it will continue its review of payment and compliance issues for items such as orthotic braces, osteogenesis stimulators, power mobility devices, and nebulizer machines.<sup>10</sup> Similarly, financial interest reports as to the open payments program, outpatient physical therapy, quality oversight of ambulatory surgical centers, and other programs will remain part of OIG's plan for 2017.<sup>11</sup>

The *Centers for Medicare and Medicaid Services*' (CMS) will continue its review of the Medicare programs by scrutinizing Medicare Part C, also known as Medicare Advantage, will consider the extent of denied care in its capitated payment systems and any financial incentives for these plans to underserve beneficiaries. The Medicare Part D prescription drug program is a significant area of concern for the OIG, and it plans to specifically address issues regarding drug rebates dispensed by 340B pharmacies and questionable billing for compounded topical drugs.<sup>12</sup> For the Medicare program in general, including Parts A and B, the OIG plans to review payments for service dates after an individual's death to ensure that payments are not made for fraudulent services claimed to have been rendered to deceased individuals.

Medicaid is another significant area of focus for the OIG, and the OIG reiterated its objective to review payments

for service dates after an individual's death for this program. Given the increase in coverage since its expansion in many states under the ACA, the OIG plans to focus on preventing fraud, waste, and abuse due to the increase in Medicaid enrollees.<sup>13</sup> The OIG will review reimbursement for outpatient prescription drugs and Medicaid Managed Care Organizations, in addition to fraud in Medicaid Personal Care Services.<sup>14</sup> The OIG will also review state management issues, including investigating third-party liability in payment collections, overpayment reporting and collections, and continued examinations of whether states are making prohibited Medicaid payments for hospital care associated with healthcare-acquired conditions and provider preventable conditions.<sup>15</sup>

In the area of public insurance reform, the OIG is continuing to examine *accountable care organizations* in the *Medicare Shared Savings Program* and compliance with federal requirements.<sup>16</sup> It also plans to review the implementation of the Quality Payment Program from CMS, which deals with how Medicare determines compensation for clinicians.<sup>17</sup> The OIG will provide the timeline and key milestones established by CMS, along with any major challenges and vulnerabilities the OIG will face.<sup>18</sup> Additionally, the OIG will examine the Medicaid Delivery System Reform Incentive Payments program in tandem with accountable care model compliance.<sup>19</sup>

The OIG did not identify any new issues in regards to health insurance marketplaces, but it plans to continue its consideration of implementation, operation, and oversight of these marketplaces.<sup>20</sup> Focus will remain on payment accuracy, eligibility, management and administration, *information technology* (IT) security risks, and consumer fraud.<sup>21</sup> The 2017 WP places a continued emphasis on electronic health records and the incentive programs established by the *Health Information Technology for Economic and Clinical Health (HITECH) Act*, noting that it plans to review compliance with these programs, as well as implementation issues among healthcare organizations.<sup>22</sup>

Moreover, the OIG remains thoroughly invested in CMS-related legal and investigative activities, and plans to continue its enforcement of CMS-related statutes and other instances of fraud involving federal healthcare programs, noting that it has seen an increase in individuals engaging in healthcare fraud schemes established for the sole purpose of stealing Medicare dollars.<sup>23</sup> However, the Trump administration and the Republican-controlled Congress will likely have an effect on HHS and OIG areas of concern.<sup>24</sup> Likewise, the appointment of Seema Verma, MPH, as Administrator of CMS and Representative Tom Price as Secretary of HHS may have an effect on the extent to which resources continue to be allocated toward CMS legal and investigative activities.<sup>25</sup> The 2017 WP specifically mentioned a focus in the coming year on controlled and non-controlled prescription drugs, home health agencies, ambulance transportation, durable medical equipment, and diagnostic radiology and laboratory testing.<sup>26</sup> It also plans to perform a detailed examination of government-wide financial data standards and CMS action on Comprehensive Error Rate Testing data, especially as to Medicare *fee-for-service* payments.<sup>27</sup>

The OIG 2017 WP identifies a wide range of planned reviews and examinations, especially with regard to provider reimbursement and addressing fraud and overpayment within CMS. Documentation and compliance with federal healthcare program requirements remains essential for healthcare organizations, as the OIG gives no indication in the WP that it plans to scale back review of fraud and abuse in the industry. Healthcare reform will likely remain a significant issue going forward with the new administration; changes to the health insurance marketplaces and reforms in public healthcare programs are likely, and these changes will affect oversight programs for healthcare organizations. Consequently, it remains to be seen as to the effect the new HHS and CMS administrators will have on the OIG's continuously updated 2017 WP.

1 "Work Plan Fiscal Year 2017" By Office of Inspector General, <https://oig.hhs.gov/reports-and-publications/archives/workplan/2017/HHS%20OIG%20Work%20Plan%202017.pdf> (Accessed 12/05/16) pp. iv-v.

2 *Ibid.*

3 *Ibid.* p. v.

4 *Ibid.*

5 *Ibid.* p. iv-v.

6 *Ibid.* p. 1.

7 *Ibid.*

8 *Ibid.* p. 1-12.

9 *Ibid.* p. 12, 13, 15, 22.

10 *Ibid.* p. 13-15.

11 "Office of Inspector General's Work Plan Outlines 2017 Priorities" von Briesen & Roper, S.C., Posted on The National Law Review, December 1, 2016, <http://www.natlawreview.com/article/office-inspector-general-s-work-plan-outlines-2017-priorities> (Accessed 12/06/16).

12 *Ibid.*

13 "Work Plan Fiscal Year 2017" (Accessed 12/05/16) p. 32-33.

14 Briesen & Roper, S.C., (Accessed 12/06/16).

15 "Work Plan Fiscal Year 2017" (Accessed 12/05/16) p. 40-41.

16 "Topics of Health Care Reform in the OIG Work Plan" By Paul Westfall, American Health Lawyers Association, November 30, 2016.

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 "Work Plan Fiscal Year 2017" (Accessed 12/05/16) p. 48.

21 Briesen & Roper, S.C., (Accessed 12/06/16).

22 "Work Plan Fiscal Year 2017" (Accessed 12/05/16) pp. 51-52.

23 *Ibid.* p. 53.

24 Briesen & Roper, S.C., (Accessed 12/06/16).

25 "Trump Taps Tom Price, Seema Verma to Head HHS, CMS" By Rajiv Leventhal, Healthcare Informatics, November 29, 2016, <http://www.healthcare-informatics.com/article/payment/breaking-trump-taps-tom-price-seema-verma-head-hhs-cms> (Accessed 1/10/17).

26 Briesen & Roper, S.C., (Accessed 12/06/16).

27 "Work Plan Fiscal Year 2017" (Accessed 12/05/16) pp.77-78.



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