

### *OIG Releases Report on “Incident-to” Services*

On August 5, 2009, the Office of Inspector General (OIG) released findings on their study of the billing of “incident-to” services. Incident-to services are those billed by physicians and reimbursed at the standard physician rate, but performed by non-physicians including physician assistants, nurses, medical technicians, medical assistants, or any other personnel, licensed or unlicensed.<sup>1</sup> These incident-to services are normally administered in a physician’s office and must be an integral (although incidental) part of a course of a diagnosis or treatment plan where the physician personally performs the initial service and is actively involved in the patient’s care.<sup>2</sup> They must also be furnished under the direct supervision of a physician, although this requires only that the physician be in the same office suite and available to provide direction and assistance if needed.<sup>3</sup>

Since Medicare providers are not required to report services as being performed and billed under the “incident-to” rule, there is no way to determine the full extent at which this occurs. The OIG surveyed a sample of days in which Medicare allowed a single physician to bill for more than 24 hours of services. Of these services, 51 percent of them were provided by non-physicians, representing approximately 45 percent of the total payments for all the services included in the study.<sup>4</sup> Sixty-two (62) percent of invasive procedures such as venipuncture, non-oral drug administration, chemotherapy, and surgical procedures, and 48 percent of non-invasive services, were performed by non-physicians.<sup>5</sup>

The OIG further discovered that unqualified non-physicians performed 21 percent of the services that physicians did not personally perform.<sup>6</sup> Forty-nine percent of these services were performed by employees not possessing the licensure or certification required to perform the services under state law and regulations or federal Medicare rules.<sup>7</sup> Twenty-five (25) percent of the services were performed by employees who did not have the necessary training to provide the service and another 25 percent of the procedures were performed by employees with unverifiable qualifications due to a lack of adequate documentation.<sup>8</sup> Despite this practice, under current Medicare rules, these procedures were billed and paid correctly because the incident rule allows physicians to bill for services performed by any

personnel, licensed or unlicensed.

Because services provided by unqualified non-physicians represent a risk to Medicare beneficiaries, the OIG made three recommendations:

1. CMS should revise the “incident to” rule to require non-physicians to have the necessary training, certification, and licensure pursuant to state law and state and federal regulations before they can be billed to Medicare;
2. CMS should require physicians billing Medicare for “incident to” services to identify them as such with a service code modifier; and
3. CMS should address the claims for services in the study that were not “incident to” services by definition, and also those claims that were for rehabilitation therapy services performed by employees without the training of a therapist.<sup>9</sup>

Although CMS agreed with the OIG’s first and third recommendations and is taking steps to implement them, CMS disagreed with the structure of the second recommendation, stating that the performance of incidental services is often shared between physicians and staff, making the classification of some services which are not personally performed difficult to determine.<sup>10</sup> CMS agrees with the objective of the recommendation and stated that they would study the operational issues involved with adding code modifiers in order to increase the available data on services provided under the “incident to” rule.<sup>11</sup> CMS is sharing the report and related claims data with their Medicare Administrative Contractors in order to review the improper claim payments OIG discovered during their study.<sup>12</sup> These responses signal increased scrutiny of the use of “incident-to” billing by physicians and physicians who submit claims under this rule should ensure that their employees have the proper training, certification, and licensure to provide the services they perform.

<sup>1</sup> Source: “Introduction” Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 1.

<sup>2</sup> Source: “Introduction” Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 2.

<sup>3</sup> Source: “Introduction” Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of

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Health and Human Services, Office of the Inspector General. August 2009, p. 2.

<sup>4</sup> Source: "Findings" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p.8.

<sup>5</sup> Source: "Findings" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 9.

<sup>6</sup> Source: "Findings" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 12.

<sup>7</sup> Source: "Findings" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 12.

<sup>8</sup> Source: "Findings" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 12.

<sup>9</sup> Source: "Recommendations" Prevalence and Qualification of Non-

Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 18-19.

<sup>10</sup> Source: "Appendix F: Agency Comments" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 32.

<sup>11</sup> Source: "Appendix F: Agency Comments" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 32.

<sup>12</sup> Source: "Appendix F: Agency Comments" Prevalence and Qualification of Non-Physicians Who Performed Medicare Physician Services. Dept. of Health and Human Services, Office of the Inspector General. August 2009, p. 32.



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