PUBLICATION

Fast Alert: OIG Calls For Reevaluation Of Medicare Therapy Billing

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On September 30, 2015, the Office of Inspector General (OIG) published a report titled, "The Medicare System For Skilled Nursing Facilities Needs To Be Evaluated" in response to growing concerns over Medicare's payment system for skilled nursing facilities (SNFs), specifically therapy services.

Based on data from numerous sources, the OIG report reached three conclusions:

- Medicare reimbursements for therapy "greatly exceeded" SNFs' therapy costs
- SNFs "increasingly billed for the highest level of therapy," notwithstanding the fact that "key beneficiary characteristics" generally remained the same
- SNFs' increased Medicare billing for therapy services resulted in an additional $1.1 billion in payments

According to the OIG report, SNFs received an average of $66 per day *more than* their therapy costs for ultra-high therapy, versus an average margin of just $11 per day when billing for low therapy. The OIG report also challenges an industry-wide claim that the increase in ultra-high billing is mainly the result of greater patient sophistication, demand or acuity. The OIG's data from fiscal years 2011 to 2013 shows that ultra-high therapy billing rose, even though key patient characteristics, like age and condition, generally remained static. The OIG report attributes roughly 80 percent of the $1.1 billion increase in Medicare payments to the overall uptick in ultra-high therapy billing among SNFs.

In view of the above findings, the OIG made the following recommendations to the Centers for Medicare & Medicaid Services (CMS) with respect to the current Medicare SNF payment system for therapy services:

- Decide how much to reduce Medicare reimbursement rates for therapy services
- Change how therapy services are reimbursed
- Adjust Medicare payments to remove increases unrelated to a change in beneficiary characteristics
- Enhance investigation and oversight over SNF therapy billing

The New York Times published an article entitled, "Nursing Homes Bill For More Therapy Than Patients Need, U.S. Says," on the same day the OIG report was issued. The article contains highlights from the report and comments from key officials, including Inspector General Daniel R. Levinson and acting CMS Administrator Andrew Slavitt. Inspector General Levinson pointed to the report's findings that many SNFs provided exactly 720 minutes of therapy to patients in order to bill Medicare at the ultra-high (the highest) payment rate, and claimed some SNFs had exploited Medicare's current payment system "to optimize revenues." According to Slavitt, the existing payment structure creates an incentive for SNFs to "provide as much therapy to a resident as that resident can tolerate." While Slavitt agreed that the Medicare payment rates for therapy services should be reduced, he indicated Congress would need to give CMS "additional statutory authority" to institute such a reduction. Regardless, Slavitt confirmed CMS will enhance its fraud detection and prevention efforts moving forward.

The OIG, DOJ and CMS have already stepped up their efforts to detect suspicious therapy-specific billings. More and more long term providers are finding themselves on the receiving end of expansive subpoenas requesting company-wide therapy billing records, patient charts and other data.

Over the past year, we have conducted multiple investigations into therapy billing, supervised internal audits, and assisted several clients with responding to state and federal subpoenas. We highly recommend all long term care providers review their therapy billing records and, if appropriate, conduct an internal audit to verify that the therapy services being provided are necessary, patient-specific and properly documented.

Please contact a member of Baker Donelson's Long Term Care team or your regular Baker Donelson attorney to discuss any therapy-specific billing issue(s) or questions.