Health Care Compliance Adviser: OIG Spotlight on Outpatient Cardiac Rehabilitation

In its 2003 Work Plan, the Department of Health and Human Services Office of Inspector General (“OIG”) announced its plan to review cardiac rehabilitation services provided in hospital outpatient departments to determine whether those services met Medicare coverage requirements. True to its word, between July 2003 and February 2004, the OIG issued 32 audit reports as part of a nationwide review of outpatient cardiac rehabilitation programs. According to the OIG, the audits were conducted to determine whether:

- Hospital policies and procedures reflect Medicare cardiac rehabilitation coverage requirements for direct physician supervision, “incident to” services, and Medicare-covered diagnoses; and
- Payments for outpatient cardiac rehabilitation services provided to Medicare beneficiaries during calendar year 2001 were for Medicare-covered diagnoses, were supported by adequate documentation, and were otherwise allowable for reimbursement.

For all 32 hospitals audited, the OIG found deficiencies in one or more of the areas named above. Below is an overview of Medicare coverage requirements for cardiac rehabilitation services and a brief summary of the OIG audit findings.

Medicare Coverage of Cardiac Rehabilitation Services

There are no laws or regulations that specifically address Medicare coverage of cardiac rehabilitation services. Instead, cardiac rehabilitation services provided in a hospital outpatient department are covered as services provided “incident to” a physician’s service.

Direct Supervision. As “incident to” services, outpatient cardiac rehabilitation services must be provided under a physician’s “direct supervision.” Medicare regulations define “direct supervision” generally as the physician’s presence “on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room where the procedure is performed.” Medicare regulations do not specifically define “direct supervision” as it relates to cardiac rehabilitation services.

The Medicare Intermediary Manual (“MIM”) provides that, for outpatient therapeutic services, “the physician supervision requirement is generally assumed to be met where the services are performed on hospital premises.” This guidance is seemingly qualified by a provision in the Medicare Cover-
age Issues Manual ("MCIM"), which states that a physician supervising cardiac rehabilitation services must be in the "exercise program area" and "immediately available" when cardiac rehabilitation services are being provided. The MCIM further provides that Medicare fiscal intermediaries ("FIs") may determine whether a specific physician location is "too remote" to be considered in the "exercise area." As a result, through local medical review policies ("LMRPs"), bulletins, and other communications to hospitals, FIs have set forth their own specific coverage requirements for outpatient cardiac rehabilitation services.

OIG Findings. The OIG audit reports emphasize the role of FI policies in satisfying the direct supervision requirement for cardiac rehabilitation services. For example, several hospitals audited by the OIG relied on nearby physicians and/or physicians in the emergency department to supervise cardiac rehabilitation services. The OIG did not expressly condone or disapprove of such policies, but instead instructed hospitals to work with their FIs "to ensure that the reliance placed on nearby physicians and emergency department physicians to provide this supervision conforms with the [Medicare direct supervision] requirements." A larger problem identified by the OIG was failure to designate any physician to supervise cardiac rehabilitation services. Many of the hospitals audited had not designated a physician to supervise cardiac rehabilitation services. Even those hospitals that did designate a supervising physician often could not demonstrate that direct supervision occurred because there was no documentation in the cardiac rehabilitation program’s medical records evidencing physician supervision during exercise sessions.

Periodic and Sufficient Evaluation by Supervising Physician. Because cardiac rehabilitation services are covered under the "incident to" benefit, services must be furnished as an integral, although incidental, part of the physician’s professional services in the course of diagnosis or treatment of an illness or injury. According to the MIM:

This does not mean that each occasion of service by a nonphysician need also be the occasion of the actual rendition of a personal professional service by the physician. However, during any course of treatment rendered by auxiliary personnel, the physician must personally see the patient periodically and sufficiently often to assess the course of treatment and the patient’s progress and, where necessary, to change the treatment regimen.

Thus, in addition to being "in the exercise area" and "immediately available" for consultation, a physician supervising cardiac rehabilitation service must also see a patient "periodically and sufficiently often" to manage the patient’s course of treatment.

OIG Findings. Overwhelmingly, the hospitals audited by the OIG did not satisfy the "incident to" requirements for cardiac rehabilitation services. For all but a few hospitals, the OIG "could not identify the hospital physician professional services to which the cardiac rehabilitation services were provided 'incident to.'" For example, "there was no documentation to support that a hospital physician personally saw the

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7 The MCIM sets forth whether specific services can be paid under Medicare National Coverage Policies. National Coverage Policies are "national policies," which "grant[,] limit[,] or exclude[,] Medicare coverage for a specific medical service, procedure, or device" and are "binding on all Medicare carriers [and] fiscal intermediaries." 64 Fed. Reg. 22,619, 22,622 (April 27, 1999).
8 See MCIM § 35-35A ("Services of non-physician personnel are furnished under the direct supervision of a physician. Direct supervision means that a physician must be in the exercise program area and immediately available and accessible for an emergency at all times the exercise program is conducted. It does not require that a physician be physically present in the exercise room itself, provided the contractor does not determine that the physician is too remote from the patients’ exercise area to be considered immediately available and accessible.").
9 For example, Riverbend GBA, the fiscal intermediary for hospitals in New Jersey and Tennessee, in a bulletin to all hospitals and outpatient rehabilitation facilities, defines "exercise area" as "the entire suite in which the exercise actually takes place as well as any office or examination area adjacent to or across the hall from the suite. The physician must be available at all times and therefore cannot be simultaneously performing invasive procedures or employed in a position where invasive procedures are likely (e.g., emergency room). First hand knowledge of ongoing activity is required (intermittent arms-length observation) but constant attendance is not." See Medi-1403-03 (April 21, 2003), available at http://www.rivendgba.com/vmedi/1403-03.html.
11 MIM § 3112.4.A.
patient periodically and sufficiently often to assess the course of treatment and the patient’s progress and, where necessary, to change the treatment program.\textsuperscript{12}

**Medical Necessity and Units of Service.** The MCIM provides that cardiac rehabilitation services are considered “reasonable and necessary” (and thus are covered by Medicare) only for “patients with a clear medical need, who are referred by their attending physician, and (1) have a documented diagnosis of acute myocardial infarction within the preceding 12 months; or (2) have had coronary artery bypass graft surgery; and/or (3) have stable angina pectoris.”\textsuperscript{13} Services provided in connection with a cardiac rehabilitation program are considered reasonable and necessary for up to 36 sessions, usually three sessions per week in a 12-week period. Each session is considered to be one unit of service.\textsuperscript{14} Thus, claims for cardiac rehabilitation services may be denied if there is insufficient documentation to support medical necessity, or if the claims are billed using an incorrect number of units.

**OIG Findings.** For each of the 32 hospitals audited, the OIG reviewed a sample of Medicare claims from calendar year 2001 for outpatient cardiac rehabilitation services. For most hospitals, the OIG found that at least some claims did not have sufficient documentation in the medical record to support medical necessity (e.g., no documentation to support a diagnosis of stable angina pectoris). In addition, the OIG found that many of the 32 hospitals submitted claims reflecting units of time rather than one visit per session of cardiac rehabilitation services. As a result, these hospitals received payments for multiple units of service for each cardiac rehabilitation session rather than payment for one unit of service.

**Conclusions and Recommendations**

Although the OIG’s cardiac rehabilitation audit reports identified billing and documentation errors, the reports do not state or imply that the OIG intends to seek or recommend sanctions against any of the audited hospitals. Instead, the OIG requested the hospitals to (i) refund any overpayments identified in the OIG audit to their FIs; and (ii) conduct an internal review of all cardiac rehabilitation claims from August 1, 2000 (the effective date of the outpatient prospective payment system) to the present and report their findings to their FIs and the OIG.

Although the OIG handled overpayments for cardiac rehabilitation services as simple recoupment matters in the context of these audits, hospitals should not assume that the OIG will always proceed in this fashion. Now that the OIG has addressed cardiac rehabilitation coverage requirements through its published audit reports, it may be less forgiving in the future of hospitals that bill for cardiac rehabilitation services that do not meet Medicare coverage requirements. In addition, since the OIG announced in its 2004 Work Plan that it is continuing to review outpatient cardiac rehabilitation services,\textsuperscript{15} hospitals can expect continued scrutiny and audit activity in this area.

Thus, hospitals should ensure that their policies and procedures for cardiac rehabilitation services comply with the OIG’s recent guidance as well as local coverage policies. In particular:

- Hospital policies and procedures should clearly designate one or more physicians to provide direct supervision of cardiac rehabilitation services. The supervising physician(s) must be in the exercise program area and immediately available whenever an exercise session is conducted. Local medical review policies should be consulted for more specific requirements.
- If a hospital relies on other nearby physicians or emergency department physicians to provide supervision for some or all cardiac rehabilitation sessions, the hospital should work with its FI to ensure that its supervision protocol is sufficient.
- Medical records for cardiac rehabilitation patients should (i) reflect that direct supervision was provided during all exercise sessions; (ii) demonstrate that the supervising physician periodically saw the patient and managed the course of treatment; and (iii) contain sufficient documentation of medical necessity.
- Hospitals should implement controls to ensure that only one unit of service is billed for each cardiac rehabilitation session.

\textsuperscript{12} See, e.g., OIG, Review of Outpatient Cardiac Rehabilitation Services—Central Florida Regional Hospital, Sanford, Florida, No. A-04-03-01005, at 6 (November 3, 2003).

\textsuperscript{13} MCIM § 35-25. Fiscal intermediary LMRPs for cardiac rehabilitation services often list a series of ICD-9 diagnosis codes that support medical necessity for cardiac rehabilitation services.

\textsuperscript{14} See id.

Further Information

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For further information, readers are encouraged to contact their regular Jones Day attorney or the principal authors of this Adviser, Gregory M. Luce (telephone: 202.879.4278; e-mail: gmluce@jonesday.com) and Renee M. Howard (telephone: 202.879.3703; e-mail: rmhoward@jonesday.com) in the Washington Office. General e-mail messages may be sent using our Web site feedback form, which can be found at www.jonesday.com.