

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Better A Flat Fee Than A Round Target On Your Back

Can you see the danger signs in your Medical billing company contracts?

If you're paying your billing company a percentage of the money you receive from Medicare, you could draw a higher percentage of the feds' scrutiny.

The **HHS Office of Inspector General** made clear in its 2005 Work Plan that it plans to examine physicians' arrangements with billing companies. And attorneys say any billing company contracts involving a percentage fee rather than a flat fee will be more likely to rise to the top of the OIG's hit list.

"Certainly the OIG does not like percentage contracts, in a lot of situations," says attorney **Chris Crosswhite** with **Duane Morris** in Washington.

One government theory is that percentage-based billing deals give billing companies an incentive to upcode, "because the more the clinic makes the more [the billing company] makes," says attorney **David Glaser** with **Fredrickson & Byron** in Minneapolis, MN.

"I would not encourage a client to hire someone as a coding consultant" with a payment rate based on a percentage of revenue, Glaser notes. For one thing, this arrangement makes the consultant less objective and less likely to recommend a lower-paying code when appropriate.

If you must pay your consultants on a percentage basis, don't rely on them for coding advice, Glaser urges.

Not all percentage-based contracts are created equal, though. A "weak" contract that doesn't specify the physician's role in reviewing and approving bills will draw more ire from the OIG, notes Crosswhite. Your contracts should spell out exactly what the billing company and the doctor will do. "The stronger the contract is on those kinds of things, the better that will appear when someone has to produce that contract," he adds.

Also, if you're relying on a billing company to take care of all your Medicare enrollment and assignment paperwork, you should double-check its work to make sure you're not accidentally submitting incorrect information, Crosswhite adds.

If you have reassigned your payments to your billing company, which then sends the money on to you, then a percentage-based fee may violate the reassignment rule. With percentage-based payments, your billing company will not meet one of the tests for the billing agent exception to the reassignment rules, explains Crosswhite. The very fact that the reassignment rules mention percentage deals proves they're no big deal.

But as long as you receive the money directly, "there's nothing illegal about having a percentage contract if [the billing company] gives you good advice," says Glaser. You only have cause for concern when the consultant gives you bad advice.