

## Part B Insider (Multispecialty) Coding Alert

### Compliance: OIG Scare Tactics Aim To Keep Your E/M Levels Down

#### Home health supervision caught in Catch-22

Is your billing company helping you upcode evaluation & management levels? Probably not, say experts, but that won't stop the **HHS Office of Inspector General** from thinking so.

The OIG restarted its study on E/M levels, looking for overpayments among the \$29 billion Med-icare paid in 2003. The OIG has also launched a separate audit of the relationships between billing service companies and doctors.

The OIG's **Office of Audit Services** wants to understand the different relationships billing companies have with physicians' offices, and the impact these relationships may have on the doctors' billing. The E/M investigation combined with the billing company probe may have a chilling effect on doctors, say experts.

The OIG's not-so-subtle message is, "We're going to try and discourage you from using the higher level codes by making you nervous to use them," says attorney **David Glaser** with **Fredrickson & Byron** in Minneapolis, MN. "And it's worked," he adds. Doctors routinely undercode because they feel the feds breathing down their necks.

Many physicians' offices may have technical violations of the payment assignment rules with billing offices that don't actually lead to overpayments, notes attorney **Chris Crosswhite** with **Duane Morris** in Washington. But the OIG may make these issues into a bigger deal than they actually are, Crosswhite notes.

The OIG's 2005 Work Plan, just released, also contains a number of other scary plans for physicians. For one thing, the OAS plans to probe physicians' claims for Care Plan Oversight of home health care.

CPO claims rose from \$15 million in 2000 to \$41 million 2001, and the OAS wants to know if those services were warranted.

"The study of Care Plan Over-sight could be a 'sleeper,'" says **Bob Wardwell**, a former **Centers for Medicare & Medicaid Services** official who now works for the **Visiting Nurses Associations of America**. Doctors are likely still underbilling for CPO, so the OAS survey could either scare them off or provide education that could lead to more billings. It's ironic that the OIG demands physician oversight of home health and then scares doctors out of billing for it.

"They should let physicians be clinicians and not assume they will ever be Medicare cops," says Wardwell.

Also, the OIG wants to examine physicians billing in skilled nursing facilities and see whether Medicare paid duplicate amounts to the SNFs and doctors for the same services. Medicare won't pay doctors for technical services in a SNF, and they're bundled in the payments the SNF receives. Doctors can either bill Medicare for the professional component of their services or make an agreement to let the SNF bill for both the professional and technical components of their services. But the OIG worries that doctors and SNFs are both billing separately for the same professional services.

Most SNFs don't bill for a doctor's professional services anyway, notes Glaser. But this is basically just a classic reassignment issue, he adds. The OIG should address the problem of physicians wrongly billing incident-to for non-physician practitioners' services in a SNF, where incident-to rules don't apply, he notes. "That's the thing I most worry about."

