

Part B Insider (Multispecialty) Coding Alert

Physician Notes: Malpractice Insurance Subsidy Passes OIG Muster

Skyrocketing malpractice costs require drastic measures

A hospital facing a severe shortage of neurosurgeons did the only thing it could - it agreed to subsidize malpractice costs for two neurosurgeons who were thinking of retiring.

This unorthodox arrangement could have looked like a kickback, but the **HHS Office of Inspector General** said it wouldn't prosecute the deal in advisory opinion 04-19, published Jan. 6. The two neurosurgeons unexpectedly lost their malpractice coverage, and their new insurance company wanted to charge much higher premiums. Meanwhile, their original insurer offered to give them free "tail" coverage for any claims based on prior practice - but only if they retired immediately. Otherwise, the "tail" coverage would be quite expensive.

To keep the neurosurgeons from retiring, the local hospital agreed to pay some of their malpractice coverage costs as long as they stayed in the area and served the local community. The payments weren't linked to the surgeons' referrals to the hospital, and they were free to practice elsewhere in the area. The hospital had tried - and failed - to lure other neurosurgeons to the area in time.

There were a few factors, besides the urgency, that swayed the OIG to accept the arrangement. For one thing, even with the arrangement the physicians' malpractice costs would be higher than in previous years, so they're not receiving a windfall. Also, the physicians aren't getting the subsidies for free, but instead have to provide call coverage, indigent care and membership on hospital committees. And the malpractice insurance covers their services at sites other than the hospital, which reduces the risk that the subsidy could be linked to referrals.

1. **A draft national coverage decision posted Jan. 7 by the Centers for Medicare & Medicaid Services** proposes to widen coverage of cochlear implants for many beneficiaries. Under current policy, beneficiaries with severe sensorineural hearing loss must demonstrate a test score of 30 percent or less on a sentence recognition test. But according to CMS, updates by the **Food & Drug Administration** pave the way for implant coverage for beneficiaries who have test scores of 40 percent or less.
2. **Physicians must sign every single outpatient chart prepared by a physician assistant** in a critical access hospital (CAH), according to new interpretive guidelines released last year by CMS. Previously, physicians only had to cosign 25 percent of physician assistants' outpatient medical records in the CAH setting. The new requirement is causing inconvenience to physicians and PAs, and the **American Academy of Physician Assistants** asked the **Physician Regulatory Issues Team** at CMS to review the issue, according to the PRIT Web site.