

Eli's Rehab Report

Compliance: Heads Up: Feds Pinpoint Therapists in Major Incident To Snafus

Make sure qualified therapists are performing therapy services.

Reports from the HHS Office of Inspector General are scary enough as they are, and a recent one on incident to compliance notes that a sizable number of practitioners, including therapists, aren't following the rules. Make sure you're in the compliance clear if you bill incident to a physician -- and if you don't bill incident to, find out why you should still be concerned about other findings in the report.

#1 Priority: Ensure You Have Qualified Therapists

In the HHS Office of Inspector General Report (OEI-09-06-00430), "nonphysicians" performed half of the services physicians billed, and of these services, 21 percent of the practitioners providing these services were unqualified.

Even worse: Staff not trained as therapists furnished 49 percent of rehabilitation therapy services (including primarily therapeutic exercise, massage therapy, ultrasound therapy, therapeutic activities, and electrical stimulation), points out **Gayle Lee, JD**, director of federal payment policy and advocacy for the American Physical Therapy Association (APTA).

"This is an issue that AOTA continues to fight for on a regular basis," said **Christina Metzler**, chief public affairs officer for the American Occupational Therapy Association (AOTA) in a statement.

And it's not just therapy organizations who bill incident to that should watch out: All rehab settings should make sure that qualified therapy providers are performing therapy services.

The latest rules: Medicare requires that only graduates of a professional therapist program (physical therapists, occupational therapists, or speech-language pathologists) perform therapy services.

Several years ago, "we urged CMS to set forth a policy that physical therapy services should be provided by physical therapists or physical therapist assistants under the supervision of a physical therapist," Lee recalls. "In the 2005 Physician Fee Schedule Final Rule (issued in November 2004), CMS clarified that physical therapy services furnished 'incident to' in a physician's offices should be provided by a graduate of a physical therapist professional program."

Bottom line: Resist any urge to give your aides and techs work they shouldn't be doing or to hire nonqualified personnel to perform therapy services.

Get Ready for More Enforcement

Although CMS has not agreed yet to do so, the OIG recommended that practices and facilities use a special modifier on the claim form. This modifier (which does not currently exist) would ensure the payer that physicians are billing for services only provided by clinicians with appropriate qualifications. "There is currently no requirement that physicians billing incident to use a code modifier," Lee clarifies. But APTA would support a modifier to denote that physicians are using qualified personnel to furnish services, she says.

Taking it a step further: "APTA is alarmed by these [OIG] findings and calls on CMS and Congress to act to prevent unqualified personnel from providing physical therapy services," the organization said in a statement.

Furthermore, APTA has urged Congress to "completely remove physical therapy as an 'incident to' service in physician offices and to tighten Stark II referral-for-profit regulations to eliminate financial incentives that contribute to high

physician billing of physical therapy services."

For now, CMS agreed to "take appropriate action" to address claims that were "for rehabilitation therapy services performed by nonphysicians who did not have the training of a therapist."

Beware This 'Hidden' Incident To Scenario

Most people think of therapy and incident-to billing for physician office settings. But therapists who work in hospital outpatient settings also work incident to, points out **Donna Thiel, JD**, with Baker, Donelson, Bearman, Caldwell, & Berkowitz, PC in Washington, D.C. And the problem is that so many hospitals aren't even aware that they should technically be billing therapy services this way.

How it works: "It used to be that physician supervision was presumed in this setting [because so many physicians work in the hospital already], but CMS said last year it wouldn't presume supervision in these cases anymore," Thiel explains.

And this is not good for freestanding, hospital-affiliated outpatient rehab facilities where there aren't necessarily physicians present, she adds.

The good news: In last year's Medicare Physician Fee Schedule, CMS backpedaled on nixing the presumed supervision in hospital settings. Incident-to billing in the hospital "is not really a therapist problem, but a hospital problem," Thiel says. But the issue is something to be aware of. "In my mind, the issue really hasn't been cleared up." To read the full OIG report, visit www.oig.hhs.gov/oei/reports/oei-09-06-00430.pdf.