

Home Health ICD-9/ICD-10 Alert

Coding Compliance: Beware Risky Coding Contracts - Percentage Raises Red Flag

Happy New Year from the OIG: We're watching your contracts.

If you pay coding or billing contracts as a percentage of the money Medicare pays you, compliance scrutiny may be heading your way.

One area the **HHS Office of Inspector General** plans to focus on in the new year is providers' arrangements with billing companies, the OIG's 2005 Work Plan proclaims.

And one part of a contract that raises an OIG red flag is paying a percentage fee rather than a flat fee, attorneys warn.

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

Providers that want to be cautious should either ask for an OIG Advisory Opinion on these types of contracts or establish arrangements with consultants willing to charge on some basis other than percentage of monies collected, advises Burtonsville, MD-based health care attorney Elizabeth Hogue.

Problem: If your agency hires coding consultants using a percentage compensation, the government may theorize this provides an incentive to upcode, because the more the home care provider makes, the more the billing company makes, says attorney **David Glaser** with **Fredrickson & Byron** in Minneapolis.

"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.

What to do: Not all contracts are created equal. Experts offer tips for checking out your contract:

1. Your contract should spell out exactly what the billing company and the provider will do, especially regarding the provider reviewing and approving bills. "The stronger the contract is on those kinds of things, the better your position will appear if you when someone has to produce that contract during an investigation," Crosswhite adds.
2. If you must pay your consultants on a percentage basis, don't rely on them for coding advice, Glaser urges.
3. If providers are concerned that a contract not based on a percentage of monies received will not be financially beneficial, they should include in the contract a provision that allows the provider to cancel the contract on a relatively short basis, Hogue advises.