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OIG'S FY 2008 WORK PLAN ANNOUNCES 9 NEW PROJECTS FOCUSING ON MEDICARE PHYSICIANS AND OTHER HEALTH PROFESSIONALS

Each year, the Office of Inspector General (“OIG”) of the Department of Health and Human Services (“DHHS”) announces its work plan coinciding with the Federal fiscal year running from October 1 through September 30. For fiscal year 2008 (10/1/07-9/30/08), the OIG’s work plan announces a total of 15 projects focusing on Medicare physicians and other health professionals, including nine (9) newly initiated projects in addition to six existing work plan projects already in progress.

Six On-going (“Work in Progress”) OIG Projects

For fiscal year 2008, the OIG listed the following six (6) ongoing projects as “work in progress” for fiscal year 2008:

1. **Place of Service Errors.** (Services rendered in ASCs and Hospital Outpatient Departments) OIG will review physician coding of place of service on claims for services performed in ambulatory surgical centers (ASC) and hospital outpatient departments, as federal regulations provide for different levels of payment to physicians depending on where the services are performed. Medicare pays a physician a higher amount when a service is performed in a non-facility setting, such as a physician’s office, than it does when the service is performed in a hospital outpatient department or (with certain exceptions) in an ASC. OIG seeks to determine whether physicians properly coded the places of services on claims for services provided in ASC and hospital outpatient departments.
2. **Evaluation and Management Services During Global Surgery Periods.** OIG will review industry practices related to the number of evaluation and management (E&M) services provided by physicians and reimbursed as part of the Medicare global surgery fee. The Medicare Claims Processing Manual contains the criteria for the global surgery policy. Under the global surgery fee concept, physicians must bill a single fee for all of their services usually associated with a surgical procedure and related E&M services provided during the global surgery period. The global surgery fee includes payment for a certain number of E&M services provided during the global surgery period. OIG seeks to determine whether industry practices related to the number of E&M services provided during the global surgery period have changed since the global surgery fee concept was developed in 1992.

3. **Medicare “Incident To” Services.** OIG will review Medicare claims for services furnished “incident to” the professional services of selected physicians. Medicare Part B pays for services “incident to” a physician’s professional service; such services are typically performed by a non-physician staff member in the physician’s office. Federal regulations specify criteria for billing “incident to” services, and OIG will examine Medicare services that selected physicians bill “incident to” the professional services, and the qualifications and the appropriateness of the staff who performed them. OIG’s study of services billed “incident to” will review the medical necessity, documentation, and quality of care for “incident to” services.

4. **Business Relationships and the Use of Magnetic Resonance Imaging (MRI) Under the Medicare Physician Fee Schedule.** OIG will review the arrangements under which magnetic resonance imaging (MRI) is provided under the Medicare physician fee schedule. The relevant provisions of the Social Security Act established the Medicare Physician Fee Schedule as the basis for Medicare reimbursement for all physician services. OIG will examine relationships among physicians, billing providers, and others who work together to provide imaging services and determine whether those relationships affect levels of utilization. The OIG FY 2008 work plan states that it will pay particular attention to financial relationships among the parties involved in providing services and identify whether such relationships are associated with high use of services.

5. **Medicare Payments for Interventional Pain Management Procedures.** OIG will review Medicare payments for interventional pain management procedures, as the Social Security Act provides that Medicare will pay for services only if they are medically necessary. Interventional pain management procedures consist of minimally invasive procedures, such as needle placement of drugs in targeted areas, ablation of targeted nerves, and some surgical techniques. Interventional pain management has been recognized by the OIG as a relatively new but growing medical specialty, as in 2005, Medicare paid nearly \$2 billion for these procedures. OIG seeks to determine the appropriateness of Medicare payments for interventional pain management procedures and assess the current Medicare oversight of those procedures.

6. **Payments for High-Frequency Chiropractic Treatments.** OIG will review chiropractor billings for high-frequency treatments to determine whether they comply with Medicare coverage criteria and documentation requirements. “High-frequency” refers to a potentially excessive number of treatments or outliers to guidelines or standards of care. Chiropractors are included within the Social Security Act definition of “physicians”, but only for treatment by manual manipulation of the spine to correct subluxations of the spine. Medicare regulations further limit payment to treatment of subluxations that result in a neuromusculoskeletal condition for which manual manipulation is appropriate treatment. Prior OIG work found at least 40% of chiropractic services were for maintenance therapy and thus did not meet Medicare coverage criteria. This was estimated to have cost the program and its beneficiaries approximately \$186 million in improper payments.

Nine New OIG Projects for FY 2008

In addition to the OIG projects already in progress, nine (9) new projects related to Medicare physicians and other health professionals were announced by the OIG in its FY 2008 work plan.

Those projects include the following:

1. **Medicare Payments for Psychiatric Services.** OIG will attempt to determine whether claims submitted for psychiatric services were supported and billed in accordance with Medicare requirements, focusing on whether such services were reasonable and medically necessary.

2. **Medicare Payments for Selected Physician Services.** OIG will review the appropriateness of Medicare payments for various types of physician services, including surgery, consultation, and home, office, and institutional calls to determine whether such services were paid in accordance with Medicare requirements.

3. **Appropriateness of Medicare Payments for Polysomnography.** Polysomnography services typically occur at a specialized sleep center or clinic. Polysomnography is a type of diagnostic test in which a number of the patient's physical parameters, such as heart rate and brain activity, are measured during sleep. Medicare covers polysomnography for the diagnosis of a limited number of conditions, as sleep studies are reimbursable for patients with symptoms consistent with sleep apnea, narcolepsy, impotence or parasomnia in accordance with the Medicare Benefit Policy Manual. Whereas Medicare payments for polysomnography increased from \$62 million in 2001 to \$172 million in 2004, OIG will examine the factors contributing to the rise in those payments.

4. **Long Distance Physician Claims Associated With Home Health Agency and Skilled Nursing Facility Services.** OIG will review the appropriateness of payments made for physician services paid under Medicare Part B for those beneficiaries also receiving care from Medicare home health agencies or residing in skilled nursing facilities while living significant distances from the physicians billing for such Part B physician services. OIG will attempt to determine whether Medicare Part B physician services have been inappropriately claimed for beneficiaries receiving home health agency or skilled nursing facility services where physicians are located a long distance from the residence of the Medicare beneficiary.

5. **Assignment Rules by Medicare Providers.** OIG will review and assess whether Medicare providers are adhering to the assignment rules in billing Medicare beneficiaries. Providers who accept assignment must accept Medicare's payment and beneficiary co-payment as payment in full for all covered services, and providers are prohibited from "balance billing" beneficiaries for amounts in excess of the Medicare allowed amounts. OIG will attempt to determine the extent to which providers may be billing beneficiaries in excess of amounts allowed by the Medicare assignment rules and will attempt to assess the degree of beneficiary awareness of any potential violations.

6. **Geographic Areas of High Utilization of Ultrasound Services.** OIG will attempt to review services and billing patterns in those geographic areas with a high utilization of ultrasound services paid for under the Medicare Physician Fee Schedule to determine if such services are medically necessary. In areas of high utilization of ultrasound services, OIG will examine service profiles, provider profiles, and beneficiary profiles. Proposed revisions to the

regulations were again part of the proposed calendar year (CY) 2008 Medicare Part B Physician Fee Schedule.

7. **Geographic Areas with a High Density of Independent Diagnostic Testing Facilities (IDTFs)**. OIG will review services and billing patterns in those geographic areas with high concentrations of independent diagnostic testing facilities, or “IDTF”s. An IDTF is a facility that performs diagnostic procedures and that is independent of a physician’s office or hospital. IDTFs may have a fixed location, or may be a mobile entity, and the practitioner performing the procedures may be a none physician. IDTFs must meet performance requirements found within the Medicare regulations in order to obtain and maintain their Medicare billing privileges. A 2006 OIG review found numerous problems with IDTFs, including widespread non-compliance with Medicare standards and potential improper payments estimated at \$71.5 million. In those areas with a high density of IDTFs, OIG will examine the service profiles, provider profiles, beneficiary profiles, and billing patterns.

8. **Physician Reassignment of Benefits**. Generally, Medicare statutes prohibit physicians who provide services for Medicare beneficiaries from reassigning their right to Medicare payments to other entities unless a specific exception authorizes such reassignment. For example, physicians are permitted to reassign to other entities enrolled in Medicare when contractual arrangements exist between the physicians and the entities that meet certain program integrity safeguards, or when payments are being made to a physician’s employer. Certain south Florida investigations revealed schemes in which fraudulent providers obtained identifying information about legitimate physicians and requested reassignments on their behalf. Any physician having a large number of reassignments may be indicative of fraudulent or abusive activity, and the OIG will examine a national sample of Medicare physicians to determine the extent to which they reassign their benefits to other entities and the extent to which the physicians are aware of reassignments requested on their behalf.

9. **Services Performed by Clinical Social Workers**. OIG will review services furnished by clinical social workers (CSWs) to inpatients of Medicare participating hospitals or skilled nursing facilities to determine whether the services were separately billed to Medicare Part B. Federal regulations describe services performed by a CSW that cannot be billed as CSW services under Medicare Part B when provided to inpatients of such facilities. OIG will examine Medicare Part A and Part B claims with overlapping dates of service to determine whether services performed by CSWs and inpatient facilities were separately and inappropriately billed to Medicare Part B.

Contact Dean Mead For More Information

In summary, if you find that you may be the subject of an inquiry with regard to one of the above referenced OIG projects, or if you wish to discuss how one of the above referenced OIG work projects may impact your practice, please feel free to contact Tracy J. Mabry (TMabry@deanmead.com; 407-428-5116), or any other member of the Dean Mead Healthcare and Life Sciences Industry Practice Group.