

# COMPLIANCE TODAY

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## NIURKA ADORNO

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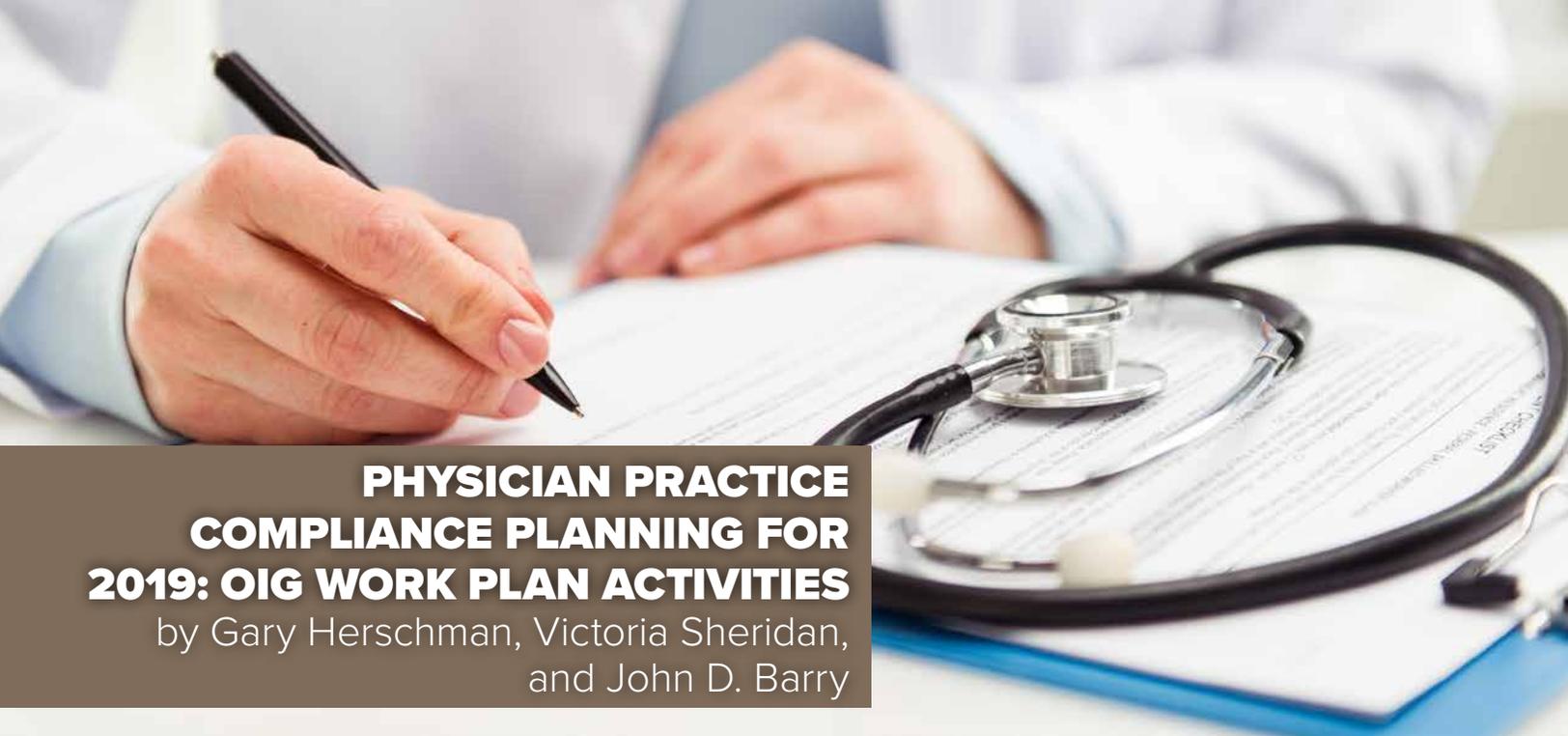
**DESIGN & LAYOUT:** Pete Swanson, 888.580.8373  
[pete.swanson@corporatecompliance.org](mailto:pete.swanson@corporatecompliance.org)

**PROOFREADER:** Bill Anholzer, 888.580.8373  
[bill.anholzer@corporatecompliance.org](mailto:bill.anholzer@corporatecompliance.org)

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## PHYSICIAN PRACTICE COMPLIANCE PLANNING FOR 2019: OIG WORK PLAN ACTIVITIES

by Gary Herschman, Victoria Sheridan, and John D. Barry



**Gary Herschman**



**Victoria Sheridan**



**John D. Barry**

*Gary Herschman is a Member of the firm in the Health Care and Life Sciences practice at Epstein Becker Green in the Newark, NJ, and New York offices. Victoria Sheridan (vsheridan@ebglaw.com) is a Member of the firm and John D. Barry (jdbarry@ebglaw.com) is an Associate in the Newark, NJ, office of Epstein Becker Green.*

The Office of Inspector General of the United States Department of Health and Human Services (the OIG) protects the integrity of federal healthcare programs and their beneficiaries by, among other activities, detecting and preventing fraud, waste, and abuse. These efforts are reflected in a Work Plan that identifies various projects that are underway or that the OIG plans to address in the near future in furtherance of its mission.<sup>1</sup> As a result, a key component of every physician practice compliance program should include monitoring and assessing how items included in the OIG's Work Plan may impact the practice and its operations.

### Looking ahead

By monitoring the Work Plan, a physician practice can be proactive and make any necessary changes to ensure continued compliance in certain key risk areas identified by the OIG. Looking ahead to 2019, physicians and physician groups should be aware of the following Work Plan items.

### Opioids

In light of the ongoing national opioid crisis, it's no surprise that the current OIG Work Plan includes several

items that focus on opioid-related issues, including oversight of opioid prescribing in selected states and addressing related issues. Physicians who prescribe opioids should pay attention to state-level oversight activities and confirm that their prescribing practices strictly comply with all applicable state and federal rules.<sup>2</sup>

### Medicare billing and documentation compliance

The OIG has identified a number of specific areas of concern related to Medicare billing and documentation requirements, including the following six key areas:

- 1. Critical care billing.** The OIG is reviewing whether Medicare payments for critical care are appropriate and paid in accordance with Medicare requirements. The OIG's focus is on the direct delivery of care by physicians for critically ill or critically injured patients, regardless of the location in which the care is rendered. Because reimbursement for critical care physician services is time-based, physicians should ensure that their records support the codes they have billed, and that the records reflect

and support the time spent by the physician evaluating the patient, providing care, and managing the patient's care.<sup>3</sup>

- 2. Outpatient cardiac and pulmonary rehab.** The OIG has expressed ongoing concern with respect to improper Medicare payments for outpatient cardiac and pulmonary rehabilitation services. In 2019, the OIG intends to continue assessing whether Medicare payments for these services are allowable in accordance with Medicare requirements. In order for cardiac and pulmonary rehab services to be covered by Medicare, the services must be medically necessary and comply with specific documentation requirements. Physicians who regularly order and perform cardiac and pulmonary rehab services should periodically audit their records to confirm that they support medical necessity and satisfy all necessary documentation requirements.<sup>4</sup>

- 3. Off-the-shelf orthotics**  
The Centers for Medicare & Medicaid Services (CMS) has identified three off-the-shelf orthotic devices for which charges have grown significantly since 2014 and that have resulted in improper payment rates as high as 79%. The devices are lumbar-sacral orthoses and knee orthoses represented by Current Procedural Terminology (CPT®) codes L0648, L0650, and L1833. A top concern for CMS is a lack of documentation of medical necessity in patients' medical records for these three devices. Therefore, the OIG intends to examine factors associated

with questionable billing for these three devices, including whether the devices were supplied in the absence of an encounter with the referring physician within 12 months prior to their orthotic claim. Any physician who orders or supplies orthotic devices should review their records and confirm that they reflect medical necessity and satisfy related documentation and billing requirements.<sup>5</sup>

**4. Medicare Part B ESRD services**

The OIG has previously identified inappropriate payments for outpatient dialysis services provided to patients diagnosed with end-stage renal disease (ESRD). The OIG will continue to review claims for treatment of ESRD to determine whether such services complied with Medicare requirements, including whether there is sufficient documentation to support medical necessity and whether the services were ordered by a physician who was treating the patient. Physicians who order and/or provide dialysis services for ESRD patients should review their records and confirm that they are medically necessary and satisfy related documentation and billing requirements.<sup>6</sup>

**5. Post-operative services**

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) required the OIG to audit and verify data collected by CMS with respect to post-operative services included in global surgery payments. In connection with this mandate, the OIG will review and verify the accuracy of the number of post-operative visits reported

to CMS by physicians. Any physician who submits claims for post-operative services should review the claims and related records for compliance with applicable Medicare billing requirements.<sup>7</sup>

**6. Hospice payments**

Prior reviews by the OIG have identified improper payments made to providers that should have been covered under per diem payments made to hospice organizations. Following the completion of these reviews, the OIG will: (a) produce summary data on all Medicare payments made outside the hospice benefit, without determining the appropriateness of such payments; and (b) conduct separate reviews of selected individual categories of services (including physician services) to determine whether payments made outside of the hospice benefit complied with CMS requirements. Any physician who provides services to patients with a terminal illness should be confirming whether the patient is also receiving hospice benefits and, if so, should take steps to ensure that no claims are submitted for services that are covered by the per diem payments made to the patient's hospice.<sup>8</sup>

**Medicare Part C denials and preauthorization denials**

The OIG has explained that because Medicare Part C plans pay based on a per-person rather than a per-service basis, such plans can create incentives to deny access to services or payment in order to increase an insurer's profit. In response to this concern, the OIG has identified a number of actions it will take related to Part C plans,



including: (a) conducting medical record reviews to determine the extent to which beneficiaries and providers were denied preauthorization or payment for medically necessary services covered by Medicare and, to the extent possible, determining the reasons for any inappropriate denials and the types of services involved; and (b) determining the extent to which denials that have been appealed to each level of review were overturned.<sup>9</sup>

**ACO strategies**

The OIG also intends to review and identify Medicare Shared Savings Plan Accountable Care Organization (MSSP ACO) strategies aimed at reducing spending and improving quality. The OIG’s goal is to specifically identify strategies ACOs are using to work with physicians and engage beneficiaries; manage the care of beneficiaries needing high-cost, complex care; address behavioral health and social needs; and use data and technology.<sup>10</sup>

The OIG Work Plan is an essential tool for physician practice compliance programs, because it very specifically identifies issues and areas of concern that

are at the forefront of OIG audit, investigation, and enforcement activities. In addition, looking at the Work Plan items as a whole allows a physician practice to identify general categories on which to focus their compliance efforts, even if the specific Work Plan items may not apply to their practice directly.

**Practical recommendations**

Physician practices should consider the following takeaways based on a review of the active Work Plan items.

**Documentation is key**

A number of the Work Plan items focus specifically on whether documentation in the medical records satisfies Medicare billing requirements. A physician practice that submits claims to Medicare should periodically audit their patient records to confirm compliance with applicable documentation and billing requirements and take corrective action as necessary.

**Pay special attention to medical necessity**

Throughout the Work Plan, the OIG has continuously reiterated its concentration on ensuring that

only medically necessary items and services are provided to patients. Physicians should ensure that their ordering decisions always involve the best interests of patients and that all such medical necessity determinations are robustly documented in patients’ medical records.

**Opioids are at the forefront**

Numerous Work Plan items relate to specific aspects of opioid prescribing, monitoring, and treatment programs. Physicians who prescribe a high volume of opioids should be highly cognizant of state and federal requirements and confirm that their records support all such prescriptions.

**Part C denials are not going unnoticed**

The OIG intends to focus on the extent to which Part C plans deny payment for services provided to beneficiaries. These activities should reassure providers that their efforts to appeal pre-authorization and payment denials are being taken seriously. If your practice has considered whether pursuing an appeal is worth the time and effort,

keep in mind that the OIG is closely monitoring these appeals.

### Monitor the OIG Work Plan closely

Beginning in June of 2017, the OIG made a major change in how its Work Plan is administered. Previously, the OIG published a Work Plan once a year, which contained the specific activities the OIG would undertake in the following 12 months. For

more than a year now, the OIG has been continuously updating the Work Plan, adding new audit activities as they are identified and removing old items when the OIG has completed its review. As a result of this new format, it is prudent for providers to routinely monitor the OIG Work Plan website to identify whether any newly added items may be of particular importance to their practice. <sup>CT</sup>

### Endnotes

1. A copy of the active Work Plan can be found on the OIG website at <https://bit.ly/2fv7PUP>
2. U.S. Dept. of Health & Human Services (HHS), Office of Inspector General (OIG), Review of States' Oversight of Opioids, W-00-18-59440, August 2018. <https://bit.ly/2SXxqIL>
3. HHS OIG, Physicians Billing for Critical Care Evaluation and Management Services, W-00-18-35816, August 2018. <https://bit.ly/2PPBAau>
4. HHS OIG, Medicare Part B Outpatient Cardiac and Pulmonary Rehab Services, W-00-18-35808, May 2018. <https://bit.ly/2Iq4Gdx>
5. HHS OIG, Questionable Billing for Off-the-Shelf Orthotic Devices, OEI-07-17-00390, January 2018. <https://bit.ly/2mQHvjG>
6. HHS OIG, Medicare Part B Payments for End-Stage Renal Disease Dialysis Services, W-00-18-35811, June 2018. <https://bit.ly/2PKjarD>
7. HHS OIG, Review of Post-Operative Services Provided in the Global Surgery Period, W-00-18-35810, July 2018. <https://bit.ly/2EuKMii>
8. HHS OIG, Medicare Payments Made Outside of the Hospice Benefit, W-00-17-35797, June 2018. <https://bit.ly/2SXmHEY>
9. HHS OIG, Denials and Appeals in Medicare Part C, OEI-09-16-00410, Completed. <https://bit.ly/2rLs5zB>
10. HHS OIG, ACO Strategies Aimed at Reducing Spending and Improving Quality, OEI-02-15-00451, June 2018. <https://bit.ly/2Ks3tU8>.

### Takeaways

- ◆ Support a culture in which physicians instinctively think about documenting medical necessity as well as other service prerequisites for each and every patient.
- ◆ Audit your practice's documentation for its top-billed Current Procedural Terminology (CPT®) codes on a quarterly or semi-annual basis, ensuring that all major codes are audited at least annually.
- ◆ Opioid prescribing patterns are under the microscope, and the OIG is monitoring related state and federal oversight initiatives.
- ◆ Consider taking a more assertive approach to appealing preauthorization and/or payment denials issued by Part C plans.
- ◆ Check the OIG Work Plan website on a quarterly or semi-annual basis so that your practice can stay on top of the areas where the OIG is focusing its audit, investigative, and enforcement efforts.

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