

Source: Health Care Daily Report: News Archive > 2017 > November > 11/30/2017 > News > Oversight: Medicare Overpayments Decline, but Some Problem Areas Remain

## Oversight

### Medicare Overpayments Decline, but Some Problem Areas Remain



By Stephen Joyce

Medicare's fee-for-service improper payment rate is again less than 10 percent, but government audits continue to show persistent high levels of alleged improper payments in high-risk areas.

The Centers for Medicare & Medicaid Services reported recently that Medicare's fee-for-service improper payments rate decreased from 11 percent in fiscal 2015 to 9.5 percent in fiscal 2016, resulting in \$4.7 billion in taxpayer savings. It was the first time since fiscal 2012 the improper-payment rate fell below 10 percent, the CMS reported.

But high levels of Medicare improper payments in discrete areas still exist. A November 2017 Health and Human Services Office of Inspector General compliance review concluded Chicago-based Rush University Medical Center made improper payments on 47.5 percent of reviewed claims involving inpatient and outpatient care, leading the inspector general's office to extrapolate the CMS made \$10.2 million in overpayments to just one hospital for calendar years 2014 and 2015. An April HHS OIG compliance review asserted New York-based Mt. Sinai Hospital received at least \$41.9 million during the 2012 and 2013 calendar years in overpayments.

Government and private-sector health care specialists agreed that while the overall rates of Medicare improper payments are decreasing, the relatively high rates alleged in the OIG reports persist because of historically problematic areas of noncompliance, such as outpatient home health-care expenses. Lawyers representing entities accused of receiving overpayments said their clients, which have enjoyed success challenging overpayment allegations, are also facing heightened scrutiny of claims submitted to Medicare for payment.

"I feel like in the past couple of years the administrative law judges have been stricter," David Glaser, Fredrikson & Byron PA attorney and health-care specialist, Minneapolis, told Bloomberg Law. Another reason for the uptick in certain types of Medicare improper-payments claims is increased allegations from whistleblowers, defense lawyers said.

#### Increased Scrutiny Abounds

Jesse Berg, an attorney with Gray Plant Mooty in Minneapolis, told Bloomberg Law the level of government interest in improper payments "is almost perpetually on the uptick." That situation is exacerbated, Berg and other defense lawyers said, by Medicare rules, which can be highly technical and constantly changing. Several lawyers said additional government guidance on how to comply fully and precisely with Medicare payment rules would be welcome.

Increased government scrutiny of health organizations has been met with increased internal scrutiny of claims before they're processed. The incidence of self-reporting improper payments and subsequent voluntary reimbursements, for instance, has increased during the past few years, the lawyers said. Health-care organizations are also implementing increasingly sophisticated compliance programs, providing training for billing staff about coding requirements and other documentation issues as well as additional education for clinicians, the lawyers said.

"As a general rule, especially my hospital clients, they're dedicating more resources to the compliance component as well as the audit component," Bob Wade, an attorney with the Barnes & Thornburg LLP health-care department, South Bend, Ind., told Bloomberg Law.

Steve Lokensgard, an attorney with Faegre Baker Daniels LLP in Minneapolis, told Bloomberg Law allegations of improper payments are complicated by the fact that many overpayment allegations are subjective clinical determinations, such as when an inpatient stay is warranted.

In the face of increased government scrutiny, health-care organizations continue to prevail in their challenges to government assertions of improper payments.

Organizations, for instance, have challenged overpayment amounts that were extrapolated from a small sample of allegedly improper payments, Deborah Kantar Gardner, an attorney with Ropes & Gray LLP, Boston, told Bloomberg Law.

#### Snapshot

- Overpayments hit four-year low
- Inpatient and outpatient billing still problematic

Auditors also frequently misapply Medicare coverage, coding and documentation requirements, are not aware of agency statements in preamble commentary to the rules, or haven't been furnished the documentation necessary to support claims, she said in an email.

#### Stratified Random Example

The HHS inspector general's analysis of Rush University's Medicare payments, conducted as part of a series of hospital compliance reviews, selected a stratified random sample of 120 inpatient and outpatient claims totaling \$1.7 million out of a total of 2,549 claims totaling \$26,456,138. A total of 57 of the scrutinized claims improperly sought overpayment, the OIG report concluded.

In a letter made a part of the report, Rush University said it agreed documentation supported a different level of reimbursement for some of the sample claims but rejected assertions of improper payments regarding others. The OIG's report recommended the Rush University facility repay \$10.2 million in alleged overpayments and conduct "reasonable" due diligence to find any other improper payments.

"Healthcare institutions frequently receive audits," Nancy Di Fiore, Rush University spokeswoman, told Bloomberg Law in an email. Di Fiore added, "This audit pertains to Medicare's criteria for inpatient admission and payment for rehabilitation services, and it does not question the quality of care that was provided. While we respectfully disagree with the conclusions of this audit, we appreciate the opportunity to dialogue with the government about the scope of their findings, and Rush will continue to work to resolve this matter."

Improper payments don't always indicate fraud activity or represent expenses that should not have occurred, Kimberly Brandt, the CMS principal deputy administrator for operations, said in a Nov. 15 statement. Lawyers agreed, pointing out that justified payments sometimes aren't documented correctly and end up being declared as improper.

To contact the reporter on this story: Stephen Joyce in Chicago at [sjoyce@bloomberglaw.com](mailto:sjoyce@bloomberglaw.com)

To contact the editor responsible for this story: Brian Broderick at [bbroderick@bloomberglaw.com](mailto:bbroderick@bloomberglaw.com)

Reproduced with permission from BNA's Health Care Daily Report, 229 HCDR (Nov. 30, 2017). Copyright 2017 by The Bureau of National Affairs, Inc. (800-372-1033)  
<<http://www.bna.com>>

#### For More Information

The CMS blog post on improper payments is at <http://src.bna.com/uzN>.

---

Contact us at <http://www.bna.com/contact-us/> or call 1-800-372-1033

ISSN 1091-4021

Copyright© 2017, The Bureau of National Affairs, Inc. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.  
<http://www.bna.com/corp/index.html#V>