COMPLIANCE ROUND-UP

OIG Workplan FY 2012

November 22, 2011

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Today's Faculty

- Brian Annulis, JD, CHC
  - Partner, Meade & Roach, LLP
  - 773.907.8343
  - bannulis@meaderoach.com

- Ryan Meade, JD, CHRC
  - Partner, Meade & Roach, LLP
  - 773.472.3975
  - rmeade@meaderoach.com

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Continuing Goals

- The goals of the Compliance Round-Up Webinars:
  - Teaching/knowledge transfer
  - Keep you up to date on compliance rules
  - Practical points
  - Assist organizations to develop in-house methods of managing
  - Please share your thoughts, suggestions (and criticisms)

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Compliance Round-Up: Webinar Overview

- As always, regularly scheduled Webinars will be supplemented, as necessary, with special “emergency” sessions

- <u>Administrative Matters</u>
  - Each session will continue be 60-75 minutes in duration, including a question and answer session
  - Each session will begin at 12:00 PM CT
  - If you are unable to participate in the live discussion, each session will be recorded and made available in MP3 format
  - We will let all of you try it out for the next three months at no additional charge
  - If you like the revised format, you can renew your subscription as of January 1, 2012

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Today's Topic and Agenda

- What is the OIG Workplan?
- How to use the OIG Workplan in compliance programs
- Hospital issues in Workplan (most significant)
- Physician issues in Workplan (most significant)

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

OIG Workplan FY2012

- The Workplan sets out the OIG's annual goals for conducting reviews of HHS programs and activities

- OIG audits:
  - Integrity of payments made by HHS agencies and programs
  - Accuracy of contractors facilitating those payments

- OIG conducts reviews to make program recommendations that could save money or enhance efficiencies

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

OIG Workplan FY2012

- The Workplan is released every year
- OIG does not always get to everything on the plan, and reviews can cross several years
- http://oig.hhs.gov/reports-and-publications/archives/workplan/2012/Work-Plan-2012.pdf

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

How to use the Workplan

- The Workplan is a good resource for developing a compliance program auditing plan
- One of the 7 elements of an “effective” compliance program is having an auditing plan
- Consider taking the most significant OIG reviews on the Workplan and adding it to your auditing plan
- Our perspective today: the most significant issues which are good for an auditing plan

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Focus Today: Hospitals & Physician Issues

- But….let's start with an oddity in the Workplan
- Topic: Nursing Home Compliance Plans
- OIG "will review Medicare and Medicaid-certified nursing homes' implementation of compliance plans as part of their day-to-day operations and whether the plans contain elements identified in OIG's compliance program guidance."
- CMS is obligated under the ACA to issue SNF compliance program regulations by 2012 and facilities to be in compliance by 2012
  - But…OIG will be reviewing nursing homes prior to the regulations
- Takeaway: Check effectiveness of nursing home compliance program

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Reliability of Hospital-Reported Quality Measure Data
- OIG will review "hospitals' controls for ensuring accuracy and validity of data related to quality of care that they submit to CMS…."
- Comment: It seems the only way OIG could audit this data would be to examine medical records.
- Takeaway: Consider conducting a test of a random samples of claims that support the hospital's best quality measures

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Accuracy of Present-on-Admission Indicators Submitted on Medicare Claims

- Audit will focus only on October 2008 and will be a medical records audit

- Interesting point: The requirement to report the information began October 2008

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Medicare Inpatient and Outpatient Payments to Acute Care Hospitals

- OIG is vague as to what they will audit, but appears to be more of a compliance program effectiveness review.
  - As a result of data mining OIG will "identify hospitals that broadly rank as least risky across compliance areas and those that broadly rank as most risky."
  - Then, OIG will review hospitals policies and procedures, and survey or interview leadership and compliance officer

- Takeaway: Consider an effectiveness review

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Hospital Inpatient Outlier Payments
- Outlier payments represent 5% of Medicare payments to hospitals each year ($6B)
- OIG will “identify characteristics of hospitals with high or increasing rates of outlier payments.”
- Takeaways:
  - Consider implementing an outlier payment review process
  - Examine trends over past 6 years
  - Audit selection of outlier payments

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Inpatient PPS: Hospital Payments for Non-physician Outpatient Services

- OIG will review payments for hospital outpatient services while the beneficiary is an inpatient at a hospital

- Takeaway: Does the hospital provider services under arrangement to other hospitals? If so, then other hospital must be billed, not Medicare

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Medicare Brachytherapy Reimbursement
- Brachytherapy is a type of anti-cancer treatment in which a radiation source is placed inside or not to the treatment area
- Takeaway: Conduct an audit sample of brachytherapy claims

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Observation Services During Outpatient Visits

- Note: This is not a review of whether the patient should have been placed in observation rather than admitted as an inpatient, but the other way around:
  - whether observation services were inappropriately billed during an outpatient stay

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Topic: Inpatient and Outpatient Hospital Claims for the Replacement of Medical Devices

- Medicare does not pay for replacing a medical device if the device is under warranty or the manufacturer recalls the device – or if the hospital receives a partial or complete payment for the device

- Takeaway: Run a report on incidents of replacement devices and how billing was handled

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Hospital Issues

- Variety of drug-specific issues in Workplan:
  - Billing for immunosuppressive drugs
  - Payments for off-label anti-cancer drugs
  - Off-label and off-compendia use of drugs
  - Herceptin
  - Avastin & Lucentis

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Physicians and Suppliers: Compliance with Assignment Rules

- Physicians participating in Medicare agree to accept payment on an "assignment" for all items and services furnished to individuals enrolled in Medicare. Social Security Act, § 1842(h)(1).

- The beneficiary agrees to allow the physician or other supplier to request direct payment from Medicare for covered Part B services, equipment, and supplies by assigning the claim to the physician or supplier.

- The physician or other supplier in return agrees to accept the Medicare-allowed amount indicated by the carrier as the full charge for the items or services provided

- Takeaway: Continuing area of focus. No balance billing for Medicare beneficiaries; physicians may opt-out of Medicare subject to opt-out rules

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: High Cumulative Part B Payments

- Medicare Part B services must be reasonable and necessary (Social Security Act, § 1862(a)(1)(A)), adequately documented (§ 1833(e)), and provided consistent with Federal regulations (42 CFR § 410).

- A high cumulative payment is an unusually high payment made to an individual physician or supplier, or on behalf of an individual beneficiary, over a specified period.

- Prior OIG work has shown that unusually high Medicare payments may indicate incorrect billing or fraud and abuse.

- Takeaway: New focus area. If an unusual amount of Part B services are provided to a Medicare beneficiary, expect scrutiny and document/chart accordingly.

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Physician-Owned Distributors of Spinal Implants

- We will determine the extent to which physician-owned distributors (POD) provide spinal implants purchased by hospitals. We will also analyze Medicare claims data to determine whether PODs we identify in our review are associated with high use of spinal implants.

- PODs are business arrangements involving physician ownership of medical device companies and distributorships.

- PODs are focused primarily in the surgical arena and are currently primarily involve orthopedic implants such as spine and total joints. However, PODs appear to be quickly growing into other areas such as cardiac implants.

- Congress has expressed concern that PODs could create conflicts of interest and safety concerns for patients.

- Takeaway: Senate Finance Committee issued a report earlier this year on the subject. Even if properly structured, expect scrutiny as it relates to patient freedom of choice and medical necessity.

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Place of Service Errors

- We will review physicians' coding on Medicare Part B claims for services performed in ASCs and hospital outpatient departments to determine whether they properly coded the places of service.

- Federal regulations provide for different levels of payments to physicians depending on where services are performed. (42 CFR § 414.32.)

- 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.

- Takeaway: Continuing area of focus. Ripe for RAC review

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Incident-To Services

- We will review physician billing for “incident-to” services to determine whether payment for such services had a higher error rate than that for non-incident-to services. We will also assess CMS’s ability to monitor services billed as “incident-to.”

- Medicare Part B pays for certain services billed by physicians that are performed by non-physicians incident to a **physician office visit**.

- A 2009 OIG review found that when Medicare allowed physicians’ billings for more than 24 hours of services in a day, half of the services were not performed by a physician.

- We also found that **unqualified** non-physicians performed 21 percent of the services that physicians did not perform personally.

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Incident-To Services

- Incident-to services represent a program vulnerability in that they do not appear in claims data and can be identified only by reviewing the medical record. They may also be vulnerable to overutilization and expose Medicare beneficiaries to care that does not meet professional standards of quality.

- Medicare's Part B coverage of services and supplies that are performed incident to the professional services of a physician is in the Social Security Act, § 1861(s)(2)(A). Medicare requires providers to furnish such information as may be necessary to determine the amounts due to receive payment. Social Security Act, § 1833(e).

- Takeaway: New focus area. Another area ripe for RAC complex reviews. Incident to services must be performed by qualified individuals acting under the physician's direct, personal supervision (in office suite and immediately available). What do your P&Ps require? How will you evidence compliance?

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: E&M Services—Trends in Coding of Claims
- We will review E/M claims to identify trends in the coding of E/M services from 2000-2009.
- We will also identify providers that exhibited questionable billing for E/M services in 2009. Medicare paid $32 billion for E/M services in 2009, representing 19 percent of all Medicare Part B payments.
- Providers are responsible for ensuring that the codes they submit accurately reflect the services they provide. Medicare Claims Processing Manual, Pub. No. 100-04, ch. 12, § 30.6.1.
- E/M codes represent the type, setting, and complexity of services provided and the patient status, such as new or established.
- Takeaway: Continuing area of focus. Ripe for RAC complex review. What P&Ps do you have in place for E/M coding?

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: E&M Services Provided during Global Surgery Periods
- We will review industry practices related to the number of E/M services provided by physicians and reimbursed as part of the global surgery fee to determine whether the practices have changed since the global surgery fee concept was developed in 1992.
- Under the global surgery fee concept, physicians bill a single fee for all of their services that are usually associated with a surgical procedure and related E/M services provided during the global surgery period.
- The criteria for global surgery policy are in Medicare Claims Processing Manual, Pub. 100-04, ch. 12, § 40.
- Takeaway: New focus area. Another area ripe for RAC complex reviews. What p&ps do you have in place for global surgical fees?

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Part B Imaging Services—Medicare Payments
- We will review Medicare payments for Part B imaging services to determine whether they reflect the expenses incurred and whether the utilization rates reflect industry practices.
- Physicians are paid for services pursuant to the Medicare physician fee schedule, which covers the major categories of costs, including the physician professional cost component, malpractice costs, and practice expense.
- Practice expenses are those such as office rent, wages of personnel, and equipment. Social Security Act, § 1848(c)(1)(B).
- For selected imaging services, we will focus on the practice expense components, including the equipment utilization rate.
- Takeaway: Continuing area of focus. Does your practice provide imaging services? Are your utilization rates above the national average for your specialty? Was the service medically necessary?

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Physician Issues

- Topic: Medicare Payments for Part B Claims with G Modifiers

- We will review Medicare payments made from 2002 to 2010 for claims on which providers used certain modifier codes indicating that Medicare denial was expected. We will determine the extent to which Medicare paid claims having such modifiers.

- We will also identify providers and suppliers with atypically high billing related to the modifiers. Providers may use GA or GZ modifiers on claims they expect Medicare to deny as not reasonable and necessary. They may use GX or GY modifiers for items or services that are statutorily excluded.

- A recent OIG review found that Medicare paid for 72 percent of pressure-reducing support surface claims with GA or GZ modifiers, amounting to $4 million in potentially inappropriate payments.

- Takeaway: If OIG report regarding pressure-reducing support surface claims is accurate, then it would appear that contractor edits are not solid. But, contractor ineptitude does not give providers/suppliers a free pass. Review claims with G modifiers to see how they are being processed.

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

OIG Workplan & RACs

- Some commonality between Workplan issues and RAC approved issues
- In Workplan, OIG published a new issue examining whether admissions to inpatient rehabilitation facilities are appropriate.
- Connolly (Region C) announced that plans to evaluate documentation in patient records to ensure patients satisfied IRF medical necessity criteria.
- Connolly also intention to review hospital billing for Herceptin (also in Workplan, as noted above)

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Subscriber Request

- Acknowledge subscriber request for topics to be addressed
  - MIC audits
  - MACs
  - ZPICs
  - How will it affect Illinois?
- We will cover those topics in future webinars

AEGIS
COMPLIANCE & ETHICS CENTER, LLP

Follow-Up

- Questions?

questions@aegis-compliance.com

audiocourses@aegis-compliance.com

- Next Lecture:

Tuesday, December 13, 2011

12pm CT/1pm ET

Happy Thanksgiving!

AEGIS
COMPLIANCE & ETHICS CENTER, LLP