



HHS OIG Steps Up The Pressure On SNFs And Therapy Services; Intensifies Calls For Changes To Medicare Payment System

Sara M. Lord

On September 30, 2015, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) issued its fifth report in five years on billings for therapy services in SNFs. *The Medicare Payment System For Skilled Nursing Facilities Needs To Be Re-Evaluated*, OEI-02-13-00610.¹ The report has received widespread attention, spurred in part by articles published on the same day in *The New York Times*, “*Nursing Homes Bill For More Therapy Than Patients Need, U.S. Says*,” and *The Wall Street Journal*, “*Medicare Overpays For Intensive Therapy, Watchdog Says*.² While media reports and first wave commentary have focused on the OIG’s criticism of therapy services in SNFs, the report is notable for its pointed recommendations for changes to the SNF reimbursement system. In short, the report is less significant because of its findings (which, generally speaking, are not new) than because it presents the OIG’s case for specific payment reforms.

The OIG’s stated Objectives were to:

1. compare Medicare payments to skilled nursing facility (SNF) costs for therapy;
2. determine the extent to which SNF billing and key beneficiary characteristics changed from fiscal years (FYs) 2011 to 2013; and
3. determine the extent to which changes in SNF billing affected Medicare payments.

The findings matched the underlying assumptions. Thus, the OIG reports,

1. Medicare payments “greatly exceeded” the SNFs’ costs for therapy – by an average margin of 29%;
2. SNFs “increasingly billed for the highest level of therapy,” while key beneficiary characteristics generally remained the same; and
3. Increased SNF billing billings for therapy resulted in \$1.1 billion in Medicare payments in FYs 2012 and 2013.

The OIG’s Conclusions incorporate its previous work, and extend beyond the immediate findings in the Report. Thus, the large differences between therapy payments and costs, “[c]ombined with the current method of paying for therapy,” . . . “creates a strong financial incentive for SNFs to bill for higher levels of therapy than necessary.” Similarly, “[under] this system” of payment, “SNFs increasingly billed for the highest level of therapy even though key beneficiary characteristics remained largely the same.” The \$1.1 billion increase in Medicare payments in FYs 2012 and 2013, then, is a consequence of the flawed payment system, and the OIG’s most recent findings are “further evidence that longstanding concerns about the SNF payment system must be addressed.”

In fact, the unstated object of the Report is to demonstrate the need to reevaluate the Medicare SNF payment system, and the Report should be read as the OIG’s lobbying memo to CMS and

1 See, e.g., December 2010 : *Questionable Billing by Skilled Nursing Facilities*, OEI-02-09-00202; November 2012 : *Inappropriate Payments to Skilled Nursing Facilities Cost Medicare More Than a Billion Dollars in 2009*, OEI-02-09-00200; February 2013 : *Skilled Nursing Facilities Often Fail To Meet Care Planning and Discharge Planning Requirements*, OEI-02-09-00201; June 2015 : *Skilled Nursing Facility Billing for Changes in Therapy: Improvements Are Needed*, OEI-02-13-00611.
2 Other publications echoed the message that Medicare is paying too much for more therapy than patients need. See, e.g., *Modern Healthcare*, September 30, 2015: “*OIG Report Suggests Nursing Homes Game Medicare*;” *McKnights*, September 30, 2015: “*HHS Calls For Therapy Overbilling Crackdown*.” In an earlier article, *The Wall Street Journal* anticipated the OIG Report: “*How Medicare Rewards Copious Nursing-Home Therapy*.” August 18, 2015.

Congress. The Recommendations offer particularly pointed guidance to CMS on the reforms the OIG believes should be implemented:

1. **Evaluate the extent to which Medicare payment rates for therapy should be reduced.** Here the OIG goes further, and outlines a specific plan of action for CMS to follow:
 - (a) CMS should reduce the base rate for therapy.
 - (b) CMS should analyze how to set an appropriate new base rate.
 - (c) CMS should take steps to develop a legislative proposal – including a proposal that could also seek to eliminate the market-basket update.
2. **Change the method of paying for therapy.** Again, the OIG emphasizes the point, exhorting CMS to “accelerate its efforts to develop and implement a new method of paying for therapy that relies on beneficiary characteristics or care needs.”
3. **Adjust Medicare payments to eliminate the effect of case mix creep.**
4. **Strengthen oversight of SNF billing.**

CMS concurred with all of the OIG’s Recommendations, including a summary of its recent work in these areas in its Response. In particular, CMS noted that, as part of the SNF PPS Payment Model Research Project, it had “reviewed past research studies and policy issues related to SNF PPS therapy and options for improving or replacing the current system of paying for SNF therapy services,” and that the findings from that research were being used “as a guide to identify potential models suitable for further analysis of the entire SNF PPS system.”

With respect to the individual Recommendations, CMS:

1. Acknowledged that additional statutory authority would be required in order for CMS to address the recommendation that Medicare payment rates for therapy be reduced, but noted that the President’s FY 2016 budget included a legislative proposal requiring a reduction to the market basket updates for SNF payment rates.
2. Commented again that the results of the SNF PPS Model Research Project would be used to “inform changes to the current method of paying for therapy.”
3. Noted that it has the authority to adjust payment rates if it determines that changes in overall payments to SNFs across the SNF payment system are unrelated to changes in beneficiaries’ characteristics, and stated that it “will consider various approaches to adjust payments once such a determination is made.”
4. Agreed that it will work to monitor SNF billing “and target SNFs that rarely bill for changes in therapy or frequently use therapy assessments incorrectly for education and claims review.”

SNFs and therapy services providers should take this latest report as a call to action. Even as the OIG and CMS pledge to step up their anti-fraud enforcement efforts, the agencies are signaling their joint commitment to reducing SNF and therapy services payments by changing the SNF payment system, including, if necessary, through legislation by Congress. While CMS’s Response is circumspect, the OIG clearly favors a therapy reimbursement system based on beneficiary characteristics, and providers should expect that proposed reforms will reflect that preference.

Authors and Contributors

Sara M. Lord

Partner, DC Office

202.677.4054

sara.lord@agg.com

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Atlanta Office

171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office

1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

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