



Paul J. Giancola
602.382.6324
pgiancola@swlaw.com
vCard



Barry D. Halpern
602.382.6345
bhalpern@swlaw.com
vCard



Brett W. Johnson
602.382.6312
bwjohnson@swlaw.com
vCard



Terry Roman
602.382.6293
troman@swlaw.com
vCard



Sara J. Agne
602.382.6026
sagne@swlaw.com
vCard



Anne W. Bishop
602.382.6267
abishop@swlaw.com
vCard

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HEALTH LAW CHECKUP

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No Free Lunch for Physicians: OIG Issues Alert on Obligation of Physicians to Monitor Reassignment of Medicare Payments

By Paul J. Giancola

On February 8, 2012, the Office of Inspector General (OIG) of the United States Department of Health & Human Services issued an Alert directed at physicians who reassign their rights to bill and receive payment from Medicare. The Alert warned that physicians who reassign their rights to receive payment from Medicare may be liable for false claims submitted by the entity on behalf of the physician.

The Alert was prompted by settlements the OIG recently entered into with eight physicians who were determined to have violated the Civil Monetary Penalties Law by "causing the submission of false claims to Medicare from physical medicine companies." In each instance, the physician reassigned their Medicare payments in exchange for Medical Director positions. The physical medicine companies, however, submitted claims for services by the physicians that were never actually performed or *were not performed as billed*.

The OIG stated that it "encourages" physicians to use "heightened scrutiny" of and they "should carefully consider" the entities to which they choose to reassign their Medicare payments and "ensure" that the entities are legitimate providers. The OIG went on to state that the physicians involved in the settlements failed to monitor the services being billed using their reassigned provider numbers. As a result, individuals with little or no medical background were providing in-house physical therapy services to Medicare and Medicaid beneficiaries. Finally, the OIG noted that physicians who reassign their right to bill Medicare have a right to access the entity's billing information concerning the services the physician performed and for which the entity is billing Medicare.

Reassignment of Medicare billing and payment rights is commonly used in employment and independent contract relationships. Physicians in contract relationships enjoy not having to bill and collect for services provided to



Robert F. Kethcart
602.382.6533
rkethcart@swlaw.com
vCard



Kathryn Hackett King
602.382.6332
kking@swlaw.com
vCard



Eric L. Kintner
602.382.6552
ekintner@swlaw.com
vCard

Medicare and Medicaid patients. Physicians generally do not audit to confirm that the entity is properly coding and billing for the services provided. The OIG Alert sends a strong message to reassigning physicians that they have an affirmative duty to:

- Perform a due diligence of the entity before providing an assignment of payments; and,
- Monitor the services billed by the entity.

Under the Civil Monetary Penalties Law, physicians are jointly and severally liable for Medicare and Medicaid overpayments due to improper billing. Possible additional penalties include \$10,000 per false claim, treble damages, and exclusion from federal and state health care programs. Accordingly, if a physician has any suspicions that an entity is up-coding or otherwise submitting inaccurate bills for services provided, physicians should take seriously what the OIG is characterizing as their duty to monitor and audit the billings submitted by the entity.

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Snell & Wilmer L.L.P. | One Arizona Center | 400 East Van Buren Street | Suite 1900 | Phoenix, Arizona 85004
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