

CMS' National Fraud Prevention Program Authorizes Unannounced Site Visits for Medicare Part A/B providers and suppliers:

In 2011, CMS implemented a site visit verification program using a National Site Visit Contractor (NSVC). The site visit verification program is a screening mechanism to prevent questionable providers and suppliers from enrolling or maintaining enrollment in the Medicare program. The NSVC will conduct unannounced site visits for Medicare Part A/B providers and suppliers. The site visit may be either an observational site visit or a detailed review to verify enrollment related information and collect specific information based on pre-defined checklists and procedures determined by CMS. During an observational visit, the inspector engages in minimal contact with the provider or supplier and does not inhibit the daily activities that occur at the facility. The inspector may take photographs of the facility as part of the site visit. During a detailed review, the inspector will enter the facility, speak with staff, take photographs, and collect information to confirm the provider's or supplier's compliance with CMS standards. Inspectors performing the site visits will be CMS subcontractors and shall possess a photo ID and a letter of authorization issued and signed by CMS that the provider or supplier may review. We urge all practices to contact our firm in the event of an unannounced site visit to ensure the CMS contractors do not investigate beyond their scope or abuse their power. For more information on this program, you may visit: <http://ow.ly/QSlsh>.

CMS Extends Enforcement of "Two-Midnight" Rule: On Wednesday, the CMS announced that it was extending its enforcement delay for the controversial "two-midnight" rule governing short hospital stays to fall in line with recently proposed changes to the policy. CMS will be extending the delay through the end of the year. The two-midnight rule calls for Medicare's payment and audit contractors to assume a hospital admission was legitimate if it spans two midnights. Shorter stays are assumed to be more appropriately billed as outpatient observation care. The Medicare Payment Advisory Commission, which advises Congress on Medicare spending, has previously suggested that lawmakers push for repealing the two-midnight rule in its entirety, but the group did not offer any alternative policy. The CMS says public comment has not produced any viable alternatives to the rule. Notwithstanding the delay, RAC auditors will continue to conduct reviews of short stay inpatient claims for reasons unrelated to patient status, including coding reviews and reviews of medical necessity.

Physicians Cannot Be Beneficiaries Within the Meaning of ERISA: The U.S. Court of Appeals for the 2d Circuit recently tackled the issue of whether physicians as health care providers of their patients are "beneficiaries" under ERISA so that they can assert ERISA provisions that provide procedural rights to health plan participants and beneficiaries. In the case of *Rojas, M.D. et al. v. Cigna Health and Life Insurance Company*, the plaintiff physician routinely received assignments of benefit agreements from his Cigna insured patients giving him the right to receive payment directly from Cigna for covered medical services that were furnished to the patients. Cigna alleged that the physician substantially overbilled for certain allergy testing, demanded a refund for the alleged overpayments, and then terminated the physician from its provider network. The physician sued in federal district court seeking, among other things, an injunction prohibiting Cigna's allegedly "retaliatory" conduct. The physician alleged that Cigna's conduct violated the anti-retaliation provision of ERISA, which makes it unlawful to discriminate against an ERISA participant or beneficiary for exercising any right to which the individual is entitled under the provisions of an employee benefit plan. The U.S. District Court held that the physician could not assert the ERISA anti-retaliation provision because only an ERISA participant or beneficiary could assert the provision, and held that a health care provider is not a "beneficiary" within the meaning of ERISA. The Second Circuit unanimously affirmed and held that although the assignment of benefit agreements gave the physician the right to receive direct payments for covered services provided to Cigna insured patients, it did not make the physician a "beneficiary" within the meaning of ERISA.

For more information on the above items, contact Kern Augustine Conroy & Schoppmann, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.



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