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OIG issues reports on ASC oversight

In late February, the Department of Health and Human Services (HHS) Office of the Inspector General (OIG) issued a set of reports assessing how state and federal agencies and accreditors oversee ambulatory surgical centers (ASCs). Medicare pays more than \$1.6 billion each year for services provided in approximately 3,000 ASCs, which, under program rules, must either be certified by a state survey and certification agency or be accredited by an approved private entity. Key findings in the report include the following:

- The annual volume of procedures performed in ASCs increased by more than 700 percent in the 1990s, making adequate oversight more important than ever.
- Medicare's system of quality oversight of state and private accreditation and certification procedures is not up to the task.
- Medicare does little to hold state certification agencies and accreditors accountable to the program and to the public.

The report offers a series of recommendations to strengthen Medicare's oversight standards and procedures. "Quality Oversight of Ambulatory Surgical Centers: A System in Neglect" and two supplemental reports are available on the Web at <http://oig.hhs.gov/oei/oei/html>.

CMS proposes modifications to privacy rule

HHS Secretary Tommy G. Thompson announced on March 21 that the Office of Civil Rights proposes to change previously issued health privacy regulations in order to ensure strong privacy protections and to correct unintended consequences that threaten access to quality care.

The federal privacy regulations guarantee patients full access to their medical records and give them more control over the use and disclosure of their personal information. However, Secretary Thompson noted that revisions are needed to avoid making it more difficult for patients to obtain quality care quickly and easily. More specifically, the proposed changes would:

- Strengthen notice provisions and remove prior consent requirements that could hinder access to care.
- Maintain the "minimum necessary" rule governing exchange of protected information, while clarifying that routine conversations between doctors, nurses, and others involved in a patient's care are allowed.
- Ensure appropriate parental access to their children's records.
- Prohibit the use of records for marketing.
- Eliminate the need for researchers to use multiple consent forms—one for informed consent to the research and one or more related to information privacy.

HHS first proposed federal privacy standards in 1999, with final standards published in December 2000. Early last year, HHS received more than 11,000 additional comment letters, which were reviewed and used in developing the most recent changes. Most covered entities have until April 14, 2003, to comply with the patient privacy rule. Additional information is available at <http://www.hhs.gov/ocr/hipaa>.

House leaders seek changes in pay formula

House Ways and Means Committee Chair William M. Thomas (R-CA) and Health Subcommittee Chair Nancy L. Johnson (R-CT) advised the Centers for Medicare & Medicaid Services (CMS) that they believe the 5.4 percent reduction in the 2002 Medicare physician fee schedule was achieved through “questionable assumptions and uncorrected errors.” In a March 21 letter to Administrator Thomas Scully, they insisted that the reduction was “premised on several actuarial assumptions that are at best open to debate, and at worst, specious.” Without a change by CMS, additional pay cuts have been projected at the following levels: 5.7 percent in 2003 and 2004, 2.8 percent in 2005, and 0.1 percent in 2006. Surgeons may support efforts by Representatives Thomas and Johnson through the College’s Legislative Action Center at <http://capwiz.com/facs/home/>.

HIPAA electronic transactions extension available

CMS announced on March 29 that it was releasing its “Electronic Health Care Transactions and Code Sets Standards Model Compliance Plan,” which will allow health plans, clearinghouses, and providers to receive a one-year extension to comply with new rules governing electronic health care transactions that were mandated by the Health Insurance Portability and Accountability Act (HIPAA). Those practices that are unable to comply with the current deadline of October 16, 2002, may submit a compliance plan and request an extension online or on paper. Further information is available at <http://www.cms.hhs.gov/hipaa/hipaa2/default.asp>.

House committee hosts hearing on equitable health regulations

The House Small Business Committee hosted a hearing on April 10 to determine how improved compliance with the Regulatory Flexibility Act could ease the burdens on small-group practices. Testifying on behalf of the American Academy of Otolaryngology-Head and Neck Surgery, incoming executive vice-president, David Nielsen, MD, FACS, recounted for the congressional representatives his experience as a solo and small group practitioner. “At one point in my solo practice I counted over 55 agencies or institutions with some form of daily oversight or regulatory control over my practice. Physicians like myself share a common frustration with the barrage of burdensome Medicare regulations and guidelines and the constant struggle to remain compliant without forsaking time with our patients or our dedication to quality health care.” He also detailed the unnecessary burdens, as well as the unreimbursed costs, physicians must bear in order to comply with federal health and safety regulations.

At the same hearing, committee chair Donald Manzullo (R-IL) criticized CMS Administrator Thomas Scully for refusing to testify about how Medicare regulations may have hurt small businesses that sell medical devices, such as portable X-ray machines. Physicians had said that Medicare’s low reimbursement rates had caused several of these companies to fold. Mr. Scully ignored a committee subpoena to testify as he felt it inappropriate to be appearing on the same panel with organizations his agency regulates, especially given that they had “...gripes about a particular regulation.”