



Judicial Diagnosis

What Now?! The OIG Worries About Physician Billing, Reflected In the 2002 Work Plan

Lawrence W. Vernaglia, JD, MPH

The Bush administration has wavered in its reaction to the health care enforcement efforts and bureaucracies of the Clinton era. Former Wisconsin Republican Governor Tommy Thompson, the new Secretary of the **Department of Health and Human Services (HHS)**, appears torn between two desires: to loosen-up health care red tape, and to guard against those who abuse or neglect the elderly beneficiaries of government health programs. For example, in March 2001, Thompson pledged, "I am fairly certain, without saying for sure, there will be some modifications to simplify and to lessen the financial burden" of compliance with the mammoth Clintonian health information privacy regulations. However, two weeks later he allowed the regulations to roll out (in Thompson's words, "begin the process of implementing") on schedule, and without a single edit. Observers await promised interpretive guidelines that will mitigate some of the more onerous requirements.

On October 1, 2001, the HHS **Office of the Inspector General (OIG)**, under its new boss, Janet Rehnquist, daughter of Chief Justice William Rehnquist, released its Work Plan for 2002.¹ The Work Plan provides insights into the OIG's planned research and investigations for the coming year. This Work Plan does not depart from past policing policies of the physician community, as some had hoped. This essay will outline some of the OIG's plans for review of physician billing, patient care, and business practices, as reflected in the 2002 Work Plan, and will offer predictions for the government's enforcement interests.

The OIG's large-scale physician investigations of the 1990s related to billing by teaching physicians, interns and residents, and all doctors providing evaluation and management services. These investigations generated fear and confusion in the industry, particularly because the underlying requirements were vague, inconsistently applied, and difficult to translate into clinical practice. The OIG now promises new investigations into these same issues.

***Physicians at Teaching Hospitals**

The OIG plans an initiative "to verify compliance with Medicare rules governing payment for physician services provided in the teaching hospital setting and to ensure that claims accurately reflect the level of service provided to patients." Fortunately, the requirements for teaching physician billing have been made clearer since 1995.

*** Billing for Residents' Services.**

A related investigation will focus on whether hospitals are properly using their interns' and residents' **physician identification numbers (PIN)** when billing Medicare. Residents may bill Medicare only when they are "moonlighting." The OIG's Work Plan defines "moonlighting" as "providing medical treatment, other than in the resident's field of study, in an outpatient clinic or an emergency room." It is curious that the OIG omitted resident services in a physician's office as "moonlighting" for reimbursement purposes.

*** Physician Evaluation and Management Codes.**

The proper selection of **evaluation and management (E&M)** codes for patient encounters continues to be a bug-bear for a great many physicians. The **American Medical Association (AMA)** and the **Centers for Medicare and Medicaid Services (CMS, formerly HCFA)** have sparred over revisions to the E&M coding guidelines for a decade. Currently, physicians may use either the 1995 or 1997 coding guidelines in selecting codes. Consequently, it is extremely difficult for a physician to choose a particular E&M code level with any certainty - unless the physician is able to bill based on the amount of time spent with the patient. Despite this chaotic coding environment, the OIG plans to "determine whether physicians correctly coded evaluation and management services in physician offices and effectively used documentation guidelines." They will also evaluate whether the carriers are doing enough to hunt down improper E&M coding, a clear signal to the carriers to step-up their E&M enforcement efforts.

*** Services and Supplies Incident to Physicians' Services.**

A similarly confusing billing area relates to physician "incident-to" billing. Under these rules, physicians may bill for the services provided by other professionals, such as nurses, technicians, and therapists, as incident-to their professional services. Incident-to services must generally be provided by an employee of the physician and under the physician's "direct supervision." There remains a level of uncertainty as to what "direct supervision" means, and how and when to submit a bill for incident-to services. Moreover, there is a proposal to do away with the "employee" requirement that should be in effect by January 1, 2002. Nevertheless, the OIG plans to investigate physician com-

pliance in this area.

The OIG plans to investigate two customary relationships between physicians: consults and emergency room staffing arrangements.

*** Consultations.**

This study promises to review whether physician consultations are properly billed. Under Medicare policy, consultations are generally reimbursable if made at the request of the patient's attending physician, the consulting physician reviews and examines the patient's condition, and the report of the consult is made part of the patient's permanent medical record. [Medicare Carriers Manual § 2020.C.] The OIG did not indicate in the Work Plan what vulnerabilities exist in the consulting relationship. However, in the past several years, the government has loosened restrictions on billing for consultations. It will be informative if the OIG believes that these policy changes have produced undesirable results.

*** Reassignment of Benefits.**

The OIG is interested in investigating how physician staffing or practice management companies manage hospital emergency rooms. A potential vulnerability is in the reassignment of Medicare payment from the physician to the staffing company. If the company does not employ the physician - and state law may prohibit the employment of

doctors by such an entity - then the physician should not reassign payment rights to the company.

*** Advance Beneficiary Notices.**

The government continues its quest to be sure that Medicare providers and suppliers offer patients **advance written notice (ABNs)** prior to a service that may not be medically necessary, and agree to submit a "demand bill" to Medicare if the patient so desires, or else be unable to bill the patient privately. The OIG will look into whether physicians are following the ABN rules, "especially with respect to noncovered laboratory service."

Finally, three other procedure-specific investigations are planned regarding inpatient dialysis services, bone density screening, and preventative services such as annual screening mammography for all women aged 40 and over; screening pap smear and pelvic exams every 3 years; colorectal screening; and bone mass measurements to identify bone mass, detect bone loss, or determine bone quality, all of which were made reimbursable by the Balanced Budget Act of 1997.

These proposed investigations are varied, but one feature is clear: the OIG plans to continue reviewing some of the billing rules that are the most complex and confusing to physicians. Whether these studies result in recommendations to clarify the rules, or prosecutions of more doctors



Vital Statistics

Rhode Island Department of Health

Patricia A. Nolan, MD, MPH, Director of Health

Edited by Roberta A. Chevoya

Rhode Island Monthly Vital Statistics Report

Provisional Occurrence Data from the Division of Vital Records

Underlying Cause of Death	Reporting Period			
	January 2001	12 Months Ending with January 2001		
	Number (a)	Number (a)	Rates (b)	YPLL (c)
Diseases of the Heart	291	3,063	309.9	4,109.0**
Malignant Neoplasms	214	2,401	242.9	6,495.0
Cerebrovascular Diseases	58	503	50.9	770.0
Injuries (Accident/Suicide/Homicide)	24	364	36.8	6,792.5
COPD	53	481	48.7	372.5

Vital Events	Reporting Period		
	July 2001	12 Months Ending with July 2001	
	Number	Number	Rates
Live Births	1142	13,428	13.6*
Deaths	775	10,199	10.3*
Infant Deaths	(4)	(98)	7.3#
Neonatal deaths	(4)	(84)	6.3#
Marriages	929	8,557	8.7*
Divorces	246	3,266	3.3*
Induced Terminations	451	5,488	408.7#
Spontaneous Fetal Deaths	90	995	74.1#
Under 20 weeks gestation	(81)	(919)	68.4#
20+ weeks gestation	(9)	(76)	5.7#

(a) Cause of death statistics were derived from the underlying cause of death reported by physicians on death certificates.

(b) Rates per 100,000 estimated population of 988,480

(c) Years of Potential Life Lost (YPLL)

Note: Totals represent vital events which occurred in Rhode Island for the reporting periods listed above. Monthly provisional totals should be analyzed with caution because the numbers may be small and subject to seasonal variation.

* Rates per 1,000 estimated population
** Excludes two deaths of unknown age.

Rates per 1,000 live births

for their inability to navigate these regulatory mazes, remains to be seen.

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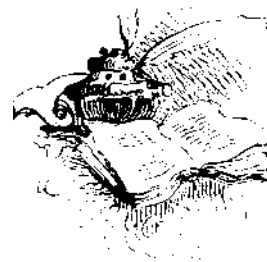
1. http://www.hhs.gov/oig/wrkpln/2002/Work_Plan_2002.htm.

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– A Physician’s Lexicon –



Medical Lexicon: Nausea and Vomiting

“Everything is gratuitous, the garden, this city and myself. When you suddenly realize it, it makes you feel sick and everything begins to drift. . . that’s nausea.”

Jean Paul Sartre wrote this fragment of autobiographic self-appraisal in 1938, a part of his larger commentary called “Nausea.”

Nausea - and its intimate companion, vomiting - harkens back to an earlier Greek word, *nautio*, meaning seasickness, and is etymologically related to the Latin, *nauticus*, meaning from the sea, and its many English language derivatives, including nautical, nautilus [a genus of mullusk], navy, navigate, as well as argonaut, aeronaut, cosmonaut and astronaut [all of whom, in principle at least, are subject to seasickness]. There also was a prominent character in ancient Greek legend called Nausicaa. She was the daughter of Alcinous, king of the Pheacians. Her name, literally, means burner of ships.

Dictionaries and high school English instructors insist that nausea, nauseous and nauseated are not interchangeable. Nausea defines the clinical state of queeziness and vertigo; nauseous defines those chemical or physical states which cause nausea; and to be nauseated is to be a victim of nausea.

Vomiting, the inseparable partner of nausea, comes from the Latin, *vomere*, meaning to throw up or, in an earlier meaning, to ulcerate or poison. A vomitory is any agent which causes vomiting and vomit is the term to describe that which is vomited. The Latin word, *vomer*, defines a plowshare, namely, an agricultural tool which throws up the soil. And the bone in the nasal septum is called vomer because of its resemblance to a plow. [Sudden blows, incidentally, to the facial vomer are known to cause acute nausea and vomiting.]

The Latin, *vomere*, is related to and originally derived from an earlier Greek word, *emetos*, also defining the act of vomiting. This Greek word has produced a number of direct English language offspring of its own, including emesis [the act of vomiting], hematemesis [blood-tinged vomitus], melanemesis [black-colored vomitus], copremesis [fecal vomiting] and emetine, the principal alkaloid of ipecac, a strong emetic.

And then there is Nux Vomica, a prominent member of the 19th Century physician’s pharmacopeia. Nux Vomica [from the Latin, literally meaning the nut that poisons] is extracted from the seed of an East Indian tree containing strychnine. [The vomica, in this case, refers back to the poisonous quality of the seed extract since *nux vomica* generally does not cause vomiting. It was typically prescribed in the form of a weak tincture which allegedly stimulated the cardiac and respiratory systems.]

The agent, strychnine, was first isolated from the plant *Strychnos ignatii* in 1818 by the French chemist, Pelletier. *Strychnos*, in Greek, meant deadly nightshade and may have been derived from an earlier Greek word, *trychno*, meaning a destroying agent.

– Stanley M. Aronson, MD, MPH



NINETY YEARS AGO

[JANUARY, 1912]

Among the obituaries was one for Oliver Henry Arnold, born in Coventry, Rhode Island. Dr. Arnold had received his AB from Brown ('65), his MD from Harvard ('67), his AM from Brown ('68). A member of the American Institute of Homeopathy, he practiced in Providence and Pawtucket. "He was interested in the biological and comparative anatomy departments at Brown University and left a large part of his property for their support." [The Arnold Laboratory at Brown was named in his memory.]

D.L. Richardson, MD, the Superintendent of the City Hospital at Providence, contributed "Laryngeal Stenosis following Diphtheria." The condition developed in 1-3% of cases. "The common impression that intubation, particularly if roughly performed, is responsible for the condition is erroneous. It occurred as frequently before O'Dwyer made intubation practicable, and as frequently now in countries where tracheotomy is more general than intubation." At the Providence City Hospital, Dr. Richardson opted to give the larynx a rest by tracheotomy and removal of laryngeal tube. He described the cases of 3 young children.

Dr. Charles V. Chapin, in "Health of Providence," reported 255 deaths for October 1911, or 12.95 per 100,000 (based on an estimated population of 231,848). This was "the lowest death rate ever recorded for October." November's rate was higher [276 deaths, a rate of 14.46], the same as for November 1908, but lower than average. Diphtheria was more prevalent; scarlet fever, less.

FIFTY YEARS AGO

[JANUARY, 1952]

Lawrence A. Senseman, MD, contributed, "Who Sees the Psychiatrist?" He found encouraging "this new acceptance of the psychiatrist by his fellow practitioners and their acceptance of the advice and opinion regarding the emotional aspects of the patient's illness." To answer the question of the title, he surveyed 250 of his consecutive new patients. Roughly half (52%) were women, 60% were between 21 years and 50 years of age; 66% had functional problems; 27% had neurological problems. Dr. Senseman routinely gave complete physical exams ("as much a part of the psychiatrist's armamentarium as it is for the internist...")

An editorial, "Progressive Health Education," praised the City of Providence for issuing 16-page Health Record booklets to parents of each newborn child.

TWENTY FIVE YEARS AGO

[JANUARY, 1977]

Paul B. Metcalf, MD, FACS, in "Perspectives on Hospitalization," called for "an objective, reproducible, widely applicable means of measuring quality of care." In particular he cited the shortfall of ALOS (average length of stay) as the overall barometer. The ALOS didn't include transfers, hospital size, or patient's status. The ALOS, though, was over-emphasized as one solution to reducing costs.

W.E. Lockhart, Jr. MD, FACA, who practiced in Alpine, Texas, near Big Bend National Park, contributed "Treatment of snakebite." An accompanying editorial urged physicians to recognize the symptoms.

Gerald E. Meyer, PharmD, Louis P. Jeffrey, MS, George K. Boyd, MD, Charles D. Mahoney, MD, and Philip N. Johnson, PhD, contributed "Theophylline derivatives: A Current review." They explained, "With improved understanding, theophylline preparations can be more judiciously utilized."

An editorial, "Lifestyle and Health," highlighted the shifting role of the patient. "For centuries it has been the patient who has been the supplicant, asking the physician to heal wounds, restore energies, or even fend off death. Now conversely, in the face of escalating health care costs, it may well be the time for the physician to enlist the help of his patients in order to balance our books." The editorial cited the "self-induced ailments," like emphysema, cirrhosis of the liver, peptic ulcer, and hypertension.



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