



December 2013

OIG Report Outlines Concerns Regarding Use of Spinal Devices Provided by Physician-Owned Distributors

The Office of Inspector General (OIG) recently issued a [report](#) (the Report) regarding the prevalence and use of spinal devices purchased from physician-owned distributorships (PODs). The Report was in response to a congressional request for a study regarding the use of spinal devices provided by PODs and the potential adverse effects on Medicare beneficiaries and federal health care programs associated with the prevalence of POD-provided spinal devices. The OIG has consistently expressed its concerns that PODs may create a financial incentive for physician-owners of a POD to perform unnecessary procedures or to use devices sold by the POD. In March 2013, the OIG issued a [Special Fraud Alert](#) in which it stated that it views PODs as "inherently suspect" under the Anti-Kickback Statute (AKS) and cautioned hospitals on entering into arrangements with PODs to secure or maintain referrals from physicians affiliated with such PODs.

THE REPORT

To assess the use of spinal devices purchased from PODs, the OIG conducted a national survey and collected data from hospitals that submitted Medicare claims for at least one spinal surgery. Following a review of such data, the OIG found that (1) in fiscal year 2011, spinal devices supplied by PODs were used in nearly one in five spinal surgeries and (2) in fiscal year 2012, more spinal surgeries were performed at hospitals that purchased spinal devices from PODs compared to hospitals that did not purchase from PODs. In addition, hospitals that purchased spinal devices from PODs had more complex spinal surgery cases and greater increases in the number of spinal surgeries performed. Most importantly, the OIG concluded that POD devices are at least as expensive, if not more expensive, than devices sold by companies without physician-owners, thereby creating the potential for increased costs to the Medicare program of spinal surgeries performed at hospitals that purchase spinal devices from PODs. This conclusion contradicts claims made by PODs regarding cost savings to hospitals.

The OIG also noted inconsistency among hospitals regarding whether physicians are required to disclose ownership interests in PODs to the hospital and/or to patients, thereby limiting a hospital's and/or patient's ability to identify a conflict of interest. The Report suggests that physician ownership and investment interest reporting requirements imposed by the Physician Payments Sunshine Act will improve transparency regarding physician interest in a POD but will not impact the OIG's concerns regarding POD arrangements that implicate the AKS.

In light of the Report and the OIG's continued expressed concerns about hospital arrangements with PODs, a hospital may wish to conduct an internal review of its purchasing

arrangements with PODs to determine whether such relationships comply with federal and state regulatory requirements, including, without limitation, the AKS.

FOR MORE INFORMATION

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