Recent OIG audit report on duplicate Medicare payments for drugs prescribed to hospice patients shows tension between OIG and CMS on whether CMS has gone far enough to prevent duplicate payments

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On August 22, 2019, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) issued a report following up to an audit that the OIG performed in 2012 indicating that Medicare Part D paid for prescription drugs that likely should have been paid for by hospice organizations under the Medicare Part A hospice benefit. The Centers for Medicare and Medicaid Services (CMS) had not concurred with the OIG's previous recommendation in the 2012 report that CMS perform oversight to ensure that Part D is not paying for drugs already covered under the Medicare per diem payments made to hospices, stating that it would be difficult and costly to implement the oversight recommended by the OIG and that the OIG had not been able to definitively determine that duplicate payments were made. In 2018, the OIG again recommended that CMS develop and implement a strategy to work with hospices to ensure that they provide drugs covered under the hospice benefit and not inappropriately shift costs to Part D. CMS did not concur with that recommendation either, instead noting that it had directed some Part D sponsors to audit payments made for beneficiaries enrolled in hospice care to ensure payments are made appropriately.

This 2019 report again examines Medicare Part D program payments for drugs to determine whether they should have been paid by hospice organizations under the Medicare Part A hospice benefit rather than billed to Part D. The 2019 audit looked at 6,689,255 records in which prescription drugs were filled for hospice beneficiaries in 2016 and billed to the Part D program at a

cost of $422,693,830. The audit examined 200 randomly selected prescription drug records, and the applicable hospices confirmed that 86 of those prescription drugs should have been paid for by the hospices, not Part D. Based on that data, the OIG estimates that the total Part D cost for the drugs that hospices, rather than Part D, should have paid was $160.8 million.

While the hospices asserted that the remaining 108 filled prescriptions were appropriately billed to Part D, the OIG disagreed, stating, "hospice organizations or hospice beneficiaries, not Part D, should have paid for many of these drugs" that were mostly for treatment of secondary diagnoses, comorbidities and pre-existing conditions that the OIG asserted should have been covered by the hospices as being related to the individuals' terminal illnesses and/or related conditions. The OIG faulted CMS for the drugs "essentially [being] paid for twice" by not having "developed or required controls to ensure that Part D is not paying for hospice covered drugs." The OIG report also states that "CMS must do more to avoid paying twice for the same drugs." CMS agreed "with the importance to avoid duplicate payments to Medicare Part D drug plan sponsors and hospices" but stated that its "current efforts will address the issue and help ensure there is no disruption in beneficiary access." To that end, CMS stated that it will "continue to engage in meaningful activities to reduce duplicate payment in this area, such as ensuring hospice providers are proactively educating beneficiaries on covered services and items (including drugs) and Part D drug plan sponsors are appropriately applying prior authorization criteria [for common end-of-life drugs] and coordinating with hospice providers on drug coverage issues." The OIG responded that it disagrees that CMS's current efforts are adequate to identify and stop duplicate payments as evidenced by the findings in the 2019 report. The OIG's further responded that it "continue[s] to recommend that CMS develop a strategy to stop the duplicate hospice drug payments that includes working with Part D sponsors and seeking whatever authorities are necessary to develop proper controls."

Authors