

Akerman Practice Update

HEALTHCARE

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New Government Report Identifies Inhalation Drugs as the Latest Fraudulent Billing Trend in South Florida

Michael P. Gennett
michael.gennett@akerman.com

In April, the Office of Inspector General (“OIG”) for the Department of Health and Human Services (“HHS”) issued a report identifying inhalation drugs as yet another area of over utilization and fraudulent Medicare billing in South Florida. The OIG is responsible for protecting the integrity of programs implemented by the HHS, including Medicare and Medicaid, as well as protecting the health and welfare of the beneficiaries served by those programs. This report is of particular concern to those Medicare DME POS suppliers in South Florida who provide inhalation drugs to their patients, as the report is likely to generate intensified auditing and investigations into these billings. These suppliers should read the report carefully to become familiar with the specific concerns that Medicare has with inhalation drugs, so as to avoid the circumstances that may lead to claims denials and overpayments.

Medicare Part B covers inhalation drugs when they are used in conjunction with durable medical equipment. There is a local coverage determination (L5007) which establishes coverage limitations for inhalation drugs, including the maximum milligrams. In order for a claim to be properly reimbursable, the requirements of the local coverage determinations (LCDs) must be met.

In preparing this report, the OIG compared the average number of paid claims and the dollar amount paid for inhalation drugs in South Florida to those in the rest of the United States. Their findings were as follows:

- Although only 2% of Medicare beneficiaries live in South Florida, 17% of total Medicare spending on inhalation drugs in 2007 was for South Florida

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beneficiaries. For example, Medicare paid 20 times more for inhalation drugs in Miami-Dade County than in Cook County, Illinois, even though Cook County has almost twice as many beneficiaries.

- Beneficiaries in South Florida were more likely (31%) to have more than 1 supplier of inhalation drugs in 2007 than beneficiaries in the rest of the country (12%).
- Medicare paid for inhalation drug claims that did not comply with LCD guidelines. For example, the average Medicare payment for a 90-day supply for budesonide in South Florida was more than double the payment amount for the maximum milligrams listed in the LCD.
- For 62% of inhalation drug claims in South Florida, the beneficiary did not have a Part B service visit during the last 3 years with the physician who reportedly prescribed the drug.
- Certain ordering physicians in South Florida were associated with a large volume of inhalation drug claims. In 2007, ten physicians ordered inhalation drugs for an average of 745 patients each, resulting in more than \$3.3 million per physician in Medicare claims for inhalation drugs.

As a result of the findings, the OIG made the following recommendations:

- Ensure that PSCs (SafeGuard Services, LLC in South Florida) are enforcing the guidelines for maximum milligrams per month for all inhalation drugs, especially budesonide.
- Eliminate Medicare’s vulnerability to potentially fraudulent or excessive claims for inhalation drugs in South Florida.
- Review cases in which DME suppliers appear to be fraudulently billing Medicare for inhalation drugs.

CMS has adopted all of the OIG’s recommendations and stated that, as of September 2008, the DME PSC for South Florida and the DME MAC had implemented a “medically unlikely” billing edit for budesonide, resulting in a 50% decrease in allowed and billed amounts for the drug in Miami-Dade and Broward counties.

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Jacksonville

Stephen G. Prom

50 North Laura Street
Suite 2500
Jacksonville, FL 32202-3646
904.798.3700
stephen.prom@akerman.com

Miami

Michael P. Gennett

One Southeast Third Avenue
25th Floor
Miami, FL 33131-1714
305.374.5600
michael.gennett@akerman.com

Tallahassee

Lisa Barclay

Highpoint Center, 12th Floor
106 East College Avenue
Tallahassee, FL 32301
850.224.9634
lisa.barclay@akerman.com

Tampa

Kirk S. Davis

SunTrust Financial Centre
401 E. Jackson Street
Suite 1700
Tampa, FL 33602-5250
813.223.7333
kirk.davis@akerman.com

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