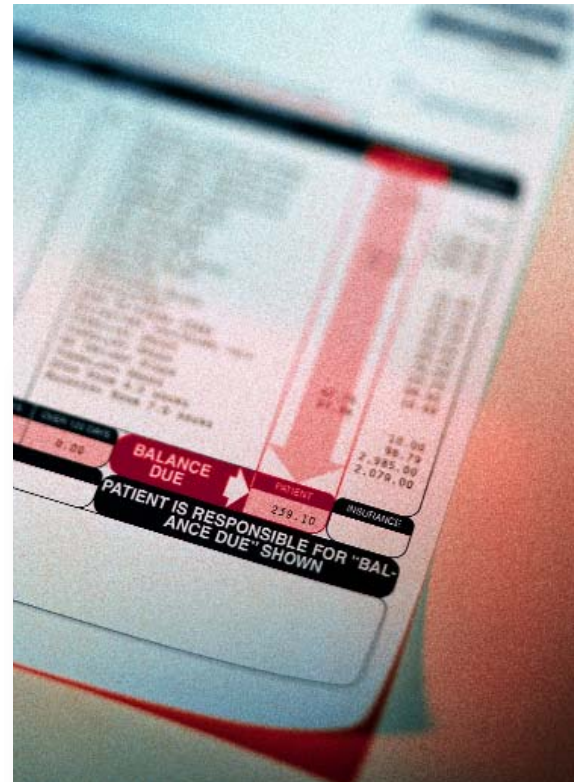


OIG WITHDRAWS PROPOSED RULE ON EXCLUSION FOR EXCESSIVE CHARGES

On Monday, June 18, 2007, the Office of the Inspector General (OIG) of the Department of Health and Human Services (HHS) withdrew a proposed rule that would have clarified its authority to exclude providers from the Medicare and Medicaid programs for submitting claims containing excessive charges, responding to significant concerns raised by the provider community.

The OIG published the proposed rule on September 15, 2003 to amend existing regulations addressing its authority to exclude from participation in all federal programs providers that bill Medicare or Medicaid “substantially in excess of such individual’s or entity’s usual charges.” The OIG proposed to define, for the first time, “substantially in excess” and “usual charges” and to expand a “good cause” exception to enforcement. The proposed rule did not apply to physician fee schedule services, but would have applied to other goods and services.



OIG proposed to:

- change the meaning of “charge” to be the amount the provider has agreed to receive for providing a service, in effect creating a prohibition on payments, not charges;
- define “usual charge” to be either the average or median charge for a particular good or service within a one-year period to non-Medicare or Medicaid payers; and
- define “substantially in excess” to mean any charge (or payment, given OIG’s proposed meaning of charge) that is more than 120 percent of the provider’s usual charge.

After reviewing comments from concerned members of the provider community, including the American Hospital Association and the National Association of Public Hospitals and Health Systems (NAPH), the OIG

decided to withdraw the proposed rule. In its Notice of Withdrawal, OIG states that it is more appropriate to evaluate provider billing patterns on a case-by-case basis rather than to implement the 120 percent benchmark, as it does “not have sufficient information at this time to establish a single, fixed numerical benchmark for ‘substantially in excess’ that could be applied equitably across health care sectors and across items and services.” In addition, the OIG states that it has insufficient information to ensure that the rule would not unintentionally raise health care costs. Commenters had suggested that providers could respond to the rule by raising charges, rather than reducing charges to Medicare and Medicaid programs.

OIG acknowledges that updating fee schedules on a timely basis is the primary means of protecting against overpayment, but intends to continue evaluating the billing patterns of individual providers using “all tools available.”

The Notice of Withdrawal of Proposed Rulemaking, 72 Fed. Reg. 33430 (Jun. 18, 2007), may be accessed [here](#).

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