

## Report on Medicare Compliance Volume 33, Number 29. August 12, 2024 Practice Settles CMP Case Over Incident-to Billing; There Are Many Other Tales to Tell

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By Nina Youngstrom

In a reminder of the different ways that incident-to billing may go awry, Charlotte Gastroenterology & Hepatology PLLC in North Carolina agreed to pay \$389,930 in a settlement with the HHS Office of Inspector General (OIG). It's a challenging area partly because "new patient visit" may be open to interpretation, and one attorney said Medicare auditors may expect physicians to abide by an incident-to requirement that doesn't exist.

According to the settlement, which was obtained through the Freedom of Information Act, OIG alleged that Charlotte Gastroenterology & Hepatology billed Medicare and Medicaid for items or services it knew were fraudulent. Specifically, between May 23, 2017, and May 23, 2023, the practice submitted claims for services performed by advanced practice providers (e.g., physician assistants and nurse practitioners) but billed as incident-to a physician's service "when the services did not satisfy the incident-to requirements because they were for new patient visits or when there was a change to a patient's plan of care." OIG alleged the conduct subjects Charlotte Gastroenterology & Hepatology to civil monetary penalties. The settlement stems from Charlotte Gastroenterology & Hepatology's self-disclosure to OIG. The practice's attorney didn't respond to RMC's requests for comment, and it didn't admit liability in the settlement.

Incident-to billing is a high-risk area, and the risk intensifies when it collides with telehealth, said Holly Louie, a consultant with MSN Healthcare Solutions. "The OIG was so concerned" that it flagged incident-to billing in its 2023 telehealth toolkit, which is designed to help providers analyze telehealth claims to identify risk areas.<sup>[1]</sup> As OIG stated, "the measures in this toolkit were designed with 'incident to' billing in mind." Physicians also may run into trouble because some commercial payers prohibit incident-to billing, but their practices don't make the distinction in the way they bill, Louie said.

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