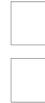


# **Researching Medicare and Medicaid Issues: Sources and Techniques**

## **HCCA New England Regional Meeting**

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September 7, 2016



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### **Goals for Today**

1. Context – Why Are You Doing Research?
2. Understand What Resources are Available.
3. Using the Resources and Technologies.
4. Running a Structured Research Project.
5. Tips for Success and Avoiding Traps.



## Context: Why Are We Researching This Issue?

- How Medicare/Medicaid Research Issues Arise:
  - Internal Compliance Questions.
  - Government Investigations.
  - Reimbursement Dispute (appeal, arbitration, litigation).
  - Commercial Litigation Issues (proving damages, explaining the “why” that motivated parties).
  - Corporate Transactions.
  - Help the Client Sort Out Rules to Do their Jobs.
  - Reimbursement Planning.



## Context: Why Are We Researching This Issue?

- The *reason* for what you are doing is important.
- Not every question requires same level of rigor – be clear about purpose before you start.
  - “It was a good answer - not a complete analysis, not a hard question - but the point is, I did it.” (Hart, from *The Paper Chase*, 1973)
- Sometimes all you need (or can afford) is a quick answer (*e.g.*, what does Reg say? What does NCD/LCD say?)
- Ask the Partner or Client whether they are seeking a comprehensive structured research project. If not, make it very clear what scope of work you are undertaking.
- ***But be sure you can explain what you did and why.***



## Understanding What Resources are Available

- Reimbursement resources have changed dramatically over the past 10 years.
  - Commercial sources changing.
  - Far more publicly-available primary source material (which used to be only on commercial services).
  - Better on-line searching.
  - Federal/DHHS resources changed significantly – entire manual system changed in 2003.



## The Medicare Program Primary Source Information

- “Information age” tendency to cut corners using on-line resources and rely on secondary sources.
- Similar tendency to see on-line analysis that looks “just right.”
- Don’t Do it! Not just plagiarism – it’s often wrong!
- Think law school, not college, and use PRIMARY SOURCES!
- Do not even assume that cites are correct or current.



## The Medicare Program Primary Source Information *(cont.)*

- Statutes:
  - 42 USC §§1301 – 1320d-8, 1395 – 1395hhh.
  - Title XVIII of the Social Security Act (SSA).
- Legislative History including Congressional Record, Committee Reports and Conference Reports.
- CMS Resources:
  - Regulations – 42 CFR.
  - Federal Register Commentary.



## The Medicare Program Primary Source Information *(cont.)*

- CMS Manuals:
  - Paper Based Manuals – continuing utility.
    - Provider Reimbursement Manual
    - State Medicaid Manual
    - Historic References
  - Internet Only Manuals - more on these later.
  - Communication Vehicles:
    - Program Transmittals
    - Manual Instruction Updates
    - One-Time Notifications (CMS Pub. 100-20)
    - Recurring Update Notifications (CMS Pub. 100-21)



## The Medicare Program Primary Source Information *(cont.)*

- CMS Forms and Instructions.
  - Different purposes, e.g.:
    - CMS Form(s) 855
    - CMS Form 1500 & 1450 (UB 04)
    - CMS Form 2567
    - CMS Form 2552 and 339
  - Forms are more important than many realize:
    - Certifications
    - What information is actually required
    - Instructions matter!
  - Use the official list when possible:
    - <http://www.cms.hhs.gov/cmsforms/cmsforms/List.asp>

## The Medicare Program Primary Source Information *(cont.)*

- Medicare Coverage Database:
  - National Coverage Determination Process
  - Local Coverage Determinations
  - Local policy articles
  - National coverage analyses, coding analyses for labs, Medicare coverage guidance documents
- CMS Issuances:
  - CMS Coding Guidance
  - MLN Matters (formerly MedLearn)
  - [www.cms.hhs.gov](http://www.cms.hhs.gov) Summaries & Overviews
  - FAQs – often narrow; can be right on point
    - The search field for FAQs works.

## The Medicare Program Primary Source Information *(cont.)*

- **OIG Issuances:**
  - Regulations
  - Fraud Alerts
  - Compliance Guidance
  - Advisory Opinions
  - Audit Reports
  - Settlement and CIA Agreements
  - OIG Work Plan
- **Remember the OIG is not CMS.**



## The Medicare Program Primary Source Information *(cont.)*

- **Federal Court Case Law** (sometimes state courts too)
- **Administrative Decisions**
  - PRRB/Administrator
  - ALJ/DAB/Medicare Appeals Council Decisions
  - Medicare Geographic Classification Review Board
- **Carrier/Intermediary/MAC Issuances**
  - LCDs, LMRPs
  - Provider Bulletins
  - Manuals, “Billing Guides,” Fact Sheets



## The Medicare Program Primary Source Information *(cont.)*

- Coding Guides:
  - AMA Current Procedural Terminology (CPT) Professional Edition
  - International Disease Classification (ICD)-9-CM Reference Book for Hospitals and Physicians
  - AMA CPT Assistant
  - *2008 HCPCS Level II Expert Reference Book*
  - *AHA Coding Clinic, UB-92 Code Editor* and CD-Rom,
  - *Current Procedural Coding Expert and Coders' Desk Reference for ICD-9-CM Procedures*
- Accreditation Organization Manuals (*i.e.*, TJC)

## Researching Specific Medicare Related Issues

- Other State and other Federal materials you might not think of:
  - Individual licensure regs – MD, NP, CNS, DPM, PA, etc.
    - May contain fraud and abuse, billing, scope of practice, supervision, and corporate practice limitations.
  - Facility licensure – hospitals, SNFs, residential care, ASCs, etc.
  - Federal and state drug control laws – Federal laws are administered by Drug Enforcement Administration.
  - Insurance and managed care.
  - State health planning/Certificate of Need laws.
    - CoN approvals may contain reimbursement, charity care, or other restrictions.

## Medicare Program Secondary Source Materials

- AHLA Materials:
  - AHLA's *Health Law Archive*
    - All Program Papers – 1993-2007
    - All *Journal of Health Law* Issues – 1984-2007
    - All Health Lawyers Non-Dues Publications – 2000-2007
    - All *Health Lawyers Weekly* articles – 2001-present
    - All *Health Law Digest* articles – 1995-present
    - All *Life Sciences and Health Law Daily* briefings – 2007-present
    - All Practice Group newsletters, member briefings, toolkits and teleconference recordings – 2007-present
    - All *Health Lawyers News* – 1997-present
    - AHLA publications – *Federal Healthcare Laws & Regulations and Medicare Law*
    - AHLA Health Law Documents and AHLA Web Links
    - Discussion List postings

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## Medicare Program Secondary Source Materials *(cont.)*

- Other professional associations
  - Healthcare Financial Management Association (HFMA)
  - Health Care Compliance Association (HCCA)
  - American Hospital Association
  - American Medical Association
- Trade publications, *e.g.*:
  - *Medical Economics*
  - *Modern Healthcare*
  - *Bureau of National Affairs*
  - *Report on Medicare Compliance*
  - *The Boston Health Law Reporter*

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## Medicare Program – Background Information and Source Materials

- Commerce Clearing House (CCH) *Medicare and Medicaid Guide*
- *MediRegs – Regulation and Reimbursement Suite*
- *Your organization may subscribe to these services. There are also helpful CCH apps for iPhone and iPad which we get for free*
- *Medicare Part B Desk Reference for Physicians, CPT Expert (Ingenix)*



## The Medicaid Program – Primary Source Materials

- Statutes –
  - 42 USC §§ 1396a to 1396v, 1301-1320(d)(8).
  - Title XIX of the Social Security Act (SSA).
  - State Statutes.
  - State Statutes generally include Medicaid Fraud Statutes.
- Legislative History including Congressional Records, Committee Reports and Conference Reports.
  - Many states do not report legislative history.
  - Governor's signing statements.



## The Medicaid Program – Primary Source Materials *(cont.)*

- Regulations –
  - 42 C.F.R. Parts 430 to 457, 483, 491, 493, 498 and 1000-1008.
  - State Regulations:
    - Many state regs are not on-line.
    - Need to secure paper copies from agencies and retain date of receipt.
    - State regs sometimes expire – don't assume the old regs are not used as "guidance."
- State Medicaid Plans.
- Manuals – Federal/State.



## The Medicaid Program – Primary Source Materials *(cont.)*

- Informal issuances
- Forms and instructions
- Case law
- Carrier issuances



## The Medicaid Program – Secondary Source Materials

- Much less available.
- Similar to the Medicare secondary sources:
  - AHLA Program Materials
  - BNA Publications
  - CCH
  - Westlaw/Lexis/Lois law Databases



## The Medicare Program – Issues Related to Internet Only Manuals

- The key source of “subregulatory guidance.”
- You must become the master of them or they will become your master!
- Orientation to the Manuals:
  - Manual Organization –
    - Provider-type v. “functional areas” (program integrity, eligibility, entitlement and claims processing).
    - Paper v. internet only.
    - Consider the perspective of the entity at which the manual is directed.
  - CMS Crosswalks – unfortunately go from new to old, so much again, use multiple free text searches.



## The Medicare Program – Issues Related to Internet Only Manuals *(cont.)*

- Search Engines in CMS Manuals –
  - Limited utility, must not rely on it.
  - Core search engine on [www.cms.hhs.gov](http://www.cms.hhs.gov) more useful.
  - Secondary sources (CCH, MediRegs) better search engines, not always current or complete.
  - To find information in the Manuals, need to KNOW WHAT YOU ARE LOOKING FOR!
  - Use the “find” tool to do a dumb search for text within a manual.
 

“There is nothing like looking, if you want to find something . . . You certainly usually find something, if you look, but it is not always quite the something you were after.” (Thorin, in J.R.R. Tolkien’s *The Hobbit*, 1937)



## The Medicare Program – Issues Related to Internet Only Manuals *(cont.)*

**Most commonly used manuals for reimbursement questions include:**

- Medicare Claims Processing Manual, CMS Pub 100-04 (MCPM).
  - Much of what was in old Carriers and Intermediaries manuals.
  - Subdivided by different topics (some provider-specific, others general).
- Medicare Benefit Policy Manual, CMS Pub. 100-02 (MBPM).
  - Considerable overlap with MCPM.



## The Medicare Program – Issues Related to Internet Only Manuals *(cont.)*

- Medicare National Coverage Determinations Manual (NCD), CMS Pub. 100-03.
- Medicare Program Integrity Manual (PIM), CMS Pub. 100-08.
- State Operations Manual (SOM), CMS Pub. 100-07.



## The Medicare Program – Issues Related to Internet Only Manuals *(cont.)*

- How to use the Manuals:
  - Multiple manuals will address the same topic (Goal was to reduce “redundancies”!).
  - Must review each of them – cannot rely on one manual anymore.
- For example – purchased diagnostic test (“anti-markup”) rule:
  - MCPM Ch. 1 (General Billing Instructions) §§ 10.1.1.2, 30.2.1, 30.2.9 and 30.3.7
  - MCPM Ch. 13 (Radiological Services), §20.2.4.2
  - *Not* in Ch. 12 (Physicians/Nonphysician Practitioners) despite references in Ch. 1 to look there!



## The Medicare Program – Issues Related to Internet Only Manuals *(cont.)*

- How to use the Manuals:
  - Start with the Manual and topic you believe will contain that subject matter.
  - Use the “Find” feature to scan for text.
  - Then back out to [www.cms.hhs.gov](http://www.cms.hhs.gov) and search in CMS search tool (scan for manual sections you missed) – use find tool again.
  - Finally, use commercial search engine (MediRegs, CCH, etc.) to check your work.
  - Until CMS IOM search engine starts working, use this method.



## Running a Structured Research Project

- What is a structured research project?
  - Organized, systematic review of primary and secondary source literature to identify relevant authorities and guidance.
  - Organized – you know what you are going to search.
  - Systematic – you have a plan for the research, and you stick to it.
    - Sticking to it is hard – “mucking around” is fun.

“Yet knowing how way leads on to way, I doubted if I should ever come back . . .”  
(R. Frost, “The Road Not Taken”)



## Running a Structured Research Project *(cont.)*

- Build yourself a research tool or plan (see model in the Toolkit).
- Describe what you are going to do.
- Then show what you did.
- This document is also helpful for explaining to partner or client what you did:
  - Particularly if you have to say there is “no answer.”

“A Jedi must have the deepest commitment . . . the most serious mind.” (Yoda, “The Empire Strikes Back” 1980)



## Researching Specific Medicare Related Issues

- How to get started:
  - Job 1. **Understand the Question**
    - What is really being asked?
  - Job 2. **Understand the Facts**
    - Develop all the facts before you start researching.
    - Ask all the questions you need about the what the provider/supplier bills, what is paid, history.
    - Learn any specific issues that might be relevant.
  - Job 3. **Build the Research Plan**



## Researching Specific Medicare Related Issues *(cont.)*

- Research Hypo: Hospital client received a letter from the OIG stating that it filed improper claims for PA service and must repay \$700,000.
- Don't jump too quickly into the research you think is right – learn the facts first.

“Facts are stubborn things”

(John Adams, “*Argument in Defense of the Soldiers in the Boston Massacre Trials*,” 1770)



## Researching Specific Medicare Related Issues *(cont.)*

- Facts to be developed to complete Jobs 1 and 2:
  - What claims does OIG say were overpaid?
  - Do these claims reflect actual billings?
  - Who billed for the PA service? (PA? MD? Group? Hospital?)
  - Under what benefit (*i.e.*, independent, incident to, shared/split, as a hospital outpatient service, not billed separately, etc.)?
  - Who was paid? And on what basis?
  - Get copies of CMS 1500s, remittances, etc.
  - Any communications with Carrier? Newsletters from Carrier?



## Researching Specific Medicare Related Issues *(cont.)*

- Build the Research Plan:
  - AHLA Health Law Archive, recent OIG audits regarding similar investigations.
    - Jump-start on issue.
    - Will not take place of full-scope research.
    - Will inform research plan.
  - Specific coverage, participation and billing issues to determine the scope of the research (*i.e.*, PA service, professional services in hospitals).
  - Medicare statutes and regulations regarding the payment issue in question.



## Researching Specific Medicare Related Issues *(cont.)*

- Research Plan Inclusions:
  - Medicare regulations regarding PA billing as independent or incident to.
  - SSA Title XVIII re billing status.
  - Medicare manuals regarding PA services within providers.
    - CPM (CMS Pub. 100-4).
    - MBPM (CMS Pub. 100-02).
    - PIM (CMS Pub. 100-8).
    - Old Carriers Manual (CMS Pub. 14) and Intermediary Manual (CMS Pub. 13) to check consistency with Program Integrity and Claims Processing Manuals.



## Researching Specific Medicare Related Issues *(cont.)*

- Future Updates to Internet-Only Manuals.
- CMS transmittals and issuances regarding repayments.
  - Get on the CMS list serve for updates and notifications.
- Re: OIG Authority:
  - OIG related statutes, regulations and guidance on repayments, including OIG issuances on the specific overpayment issues. Often repayment issues may involve a fraud and abuse component to consider.



## Tips for Using CCH

Use CCH for:

- Federal material.
- Annotations as a start.
- A lead on state and contractor (FI/carrier/MAC) material.
- Latest cases and documents.

Don't use CCH as:

- Only source for state or contractor material (e.g. LCDs).
- Only source for Federal case law – or to “Shepherdize” or “KeyCite”



## Tips for Using CCH *(cont.)*

- M&M “Daily Document Update” – very useful.
- If you are doing Medicare work regularly, you should try to check this every day:
  - Cases
  - Regs
  - OIG materials
  - Letters
  - Sub regulatory guidelines



## Tips for Using CCH *(cont.)*

1. Search Tools
  - Click “Boolean Connectors” unless you want something different.
2. Example: Try “incident to” and “Nurse Practitioners.”
  - Too many hits?
  - You can scroll through to see where they are from or
  - Back off from select all, try just explanations and annotations.
    - See a few cases and 2 annotations.
    - Use links in the annotations to navigate.
  - Try Laws & Regulations.
  - Bingo!



## Researching Specific Health Law Issues

- Research Plan Inclusions – Research Tips
  - Distinguish between CMS guidance given to providers vs. instructions to carriers/FIs/MACs.



## Researching Specific Health Law Issues *(cont.)*

- Research Plan Inclusions – Research Tips *(cont.)*
  - Repayment questions
    - Involve more judgment calls because CMS guidance does not always address the specific repayment issues.
    - Contacting the Carrier/FI/MAC can confirm your research – but getting wrong answer can be worse than no answer.
    - Whether a provider has a CIA in place can affect repayment decisions, particularly process and format.



## Researching Tips

- Understanding the Issue:
  - Ask questions and then more questions.
    - Issues are often more complex than they first appear.
    - Understanding scope of issue before starting to research lessens need to do further research later.
    - Do you start with the “null hypothesis”? Or do you go in knowing what you think the answer is? Can be dangerous.
    - After thinking about the policy reasons, try to come up with possible answers before starting to research.

“The message I stress: . . . study your lessons  
Don't settle for less, even the genius asks questions.”  
(Tupac, *Me Against the World* 1995)



## Researching Tips *(cont.)*

- Recognizing the Importance of Background Research.
  - Provides a frame of reference before starting the research to answer the question.
  - Don't study roots without looking at, at least, the tree.
  - Is necessary in understanding the scope of the question.
  - After researching an area several times, makes background research less extensive and mainly involves checking on recent developments.



## Researching Tips *(cont.)*

– Tip for Research in Medicare Regulation:

***Key Practical Tip:*** Always check the Electronic Code of Federal Regulations – (E-CFR)

<http://ecfr.gpoaccess.gov>.

- Updated almost daily.
- The two-column printed format looks better, but can be out of date, updated on October 1.
- You only need to get burned once to learn this tip!



## Researching Tips *(cont.)*

- Understanding How Items or Services are Billed to the Programs.
  - There are different coverage and payment rules depending on the provider/supplier of services.
    - *E.g.* “incident to” means very different things in physician office vs. outpatient hospital department.
  - Understanding how and where the items or services are furnished can eliminate unnecessary research.



## Researching Tips *(cont.)*

- Knowing What Sources Need to be Reviewed.
  - Understand CMS Manuals.

**Key Practical Tip:** *If you print from a CMS Manual, handwrite the Manual name, chapter, and date of printing.*

*If you print from a commercial service, e.g., CCH or MediRegs, using the “File” and “Print” functions, the printout will reference the Manual name, the chapter, the section and other descriptive information.*



## Researching Tips *(cont.)*

- Knowing What Sources Need to be Reviewed *(cont.)*
  - Review index tables.

**Key Practical Tip:** *Reviewing the entire Manual or regulatory chapter can often prevent erroneous research results or can clarify a relevant section.*



## Researching Tips *(cont.)*

**Key Practical Tip:** *If you know a reg is recent, use CCH and click on “Federal Register Issuances” for reverse chronological listing of issuances sorted by “Adopted,” “Proposed” and “Notices.”*

**Key Practical Tip:** *To make sure you have not missed any Federal Registers or clarifications or correction notices, use “What’s New” link under “Quarterly Provider Updates” link on the CMS Manuals page: ([http://www.cms.hhs.gov/QuarterlyProviderUpdates/03\\_WhatsNew.asp](http://www.cms.hhs.gov/QuarterlyProviderUpdates/03_WhatsNew.asp)).*



## Researching Tips *(cont.)*

- Use search tools:
  - Get to know the limitations of the different sources.
  - Always search on more than one source.

**Key Practical Tip:** *Searching state regulations on commercial services (CCH, LoisLaw, MediRegs etc.) saves time because all the regulations are in one place.*

**BUT THEY CAN BE OUT OF DATE OR INCOMPLETE – SO NEVER END THERE!**



## Researching Tips *(cont.)*

### ■ Tips for Using Federal Register Preambles.

#### **Key Practical Tips:**

- Do key word search using the “Find” mechanism to identify the preamble section.
- Find key information including contacts at CMS Baltimore, background info like statutory and regulatory history.
- Table of Contents overview of topics discussed and assists in locating the topics in your search.
- Many final payment rules include helpful List of Acronyms.



## Researching Tips *(cont.)*

### ■ Searching for the Missing Piece.

- Stick to your plan.
  - Most difficult project is finding a rule that doesn't exist.
  - Go through research plan and check each type of information identified on the plan.
- Know when to stop.
  - After reviewing materials from research plan, any additional materials?
  - After reviewing any additional materials and index tables, stop researching.
  - Sometimes there is no needle in the haystack!



## Researching Tips *(cont.)*

- Interpreting the Research.
  - Deal with conflicting information.
    - Research results can be conflicting.
    - Be aware from a legal standpoint what implications are of conflicts between regulations and manuals.
  - Talk and think it through.
    - Review your research with someone else.
    - Write out the conflict so it is understood.
    - Which reading is more consistent with statutory scheme, policy, common sense?
    - Contact a regulator to discuss the conflict.



## Researching Tips *(cont.)*

- Confirming Research with Regulators.
  - Know which agency to contact.
    - Past experience and recommendations.
    - CMS and other agency contact lists.
  - Find the right person to answer the question.
    - Official agency contact in Fed Reg.
  - Obtain confirmation of the answer.
  - Know when to rely on regulator-provided information.
    - Sometimes you get the answer you want, but you know it can't be right.



## Questions?

- This is hard, complicated and arcane.
- Ask questions!

I can't keep up with what's been going on,  
I think my heart must just be slowing down,  
Among the human beings in their designer jeans,  
Am I the only one who hears the screams  
And the strangled cries of . . . lawyers in love.

(Jackson Browne, *Lawyers in Love*, 1983)



## Acknowledgements

- Mr. Vernaglia would like to thank his friend, Lisa O. Wilson of CMS, for her help in assembling this presentation. It is a regular feature of the AHLA Medicare & Medicaid Institute.
- Also, a big thanks to Kush Das and others here for their help with the update on the Research Toolkit a couple of years ago.



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