April 3, 2015

Jaime Durley
Deputy Regional Inspector General
U.S. Department of Health & Human Services
Office of Inspector General
Two Peachtree St. NW
Suite 30.450
Atlanta, GA 30303

Dear Ms. Durley:

On behalf of the American Association of Neuromuscular & Electrodiagnostic Medicine (AANEM) and the American Academy of Physical Medicine and Rehabilitation (AAPM&R), we are writing to provide comments on the April 2014 Office of the Inspector General (OIG) report entitled, "Questionable billing for Medicare electrodiagnostic tests" [(OEI 04-12-00420)].

It is our position that quality electrodiagnostic (EDX) studies are most appropriately performed and interpreted by physicians (MD or DO) who have been adequately trained to perform electrodiagnostic studies – neurologists or physiatrists. Neurologists and physiatrists have special training in the diagnosis and treatment of neurological and neuromuscular diseases and are also experts in the application of particular neurophysiologic techniques used to study these disorders.

A number of the Medicare Administrative Contractors (MACs) have adopted Local Coverage Determinations (LCDs) focusing on the need for special training for the provision of EMG and nerve conductions studies (NCSs) in order for these tests to be considered reasonable and necessary within the meaning of the Medicare Act. Yet, the recently released 2012 physician billing data indicates that 1,462,532 needle EMGs and NCSs were performed by independent testing facilities, physicians in specialties other than physiatry neurology, pain management/interventional pain management and by non-physicians.[1] In fact, despite the LCD requirements for special training, physicians who do not typically receive specialized training

[1] The 2012 Medicare Data included a separate "provider type" for pain management/interventional pain management physicians. Because both neurologists and physiatrists are both eligible for this subspeciality, it is possible that some neurologists and physiatrists were classified under "pain management." We do not endorse the performance of any EDX studies by any pain physician who is not a neurologist or physiatrist.
AANEM. (2012) Billing for Same Day Evaluation and Management and Electrodiagnostic Testing. Retrieved from: http://www.aanem.org/getmedia/9c053e7c-f4ec-447a-8ea8-9413a7cfee79/E-and-M-With-Same-Day-Testing-final.pdf.aspx.

conducted almost as many of these studies as physiatrists. For example, a single allergist in Texas billed for over 7,000 NCSs, and a vascular surgeon in New York performed almost 8,000 NCSs. These circumstances require increased scrutiny.

In the April 2014 report, the OIG recommends that CMS (1) increase its monitoring of claims for electrodiagnostic tests; (2) provide additional guidance and education to physicians regarding electrodiagnostic tests; and (3) take appropriate action regarding physicians who the OIG identified as having inappropriate or questionable billing patterns. Generally, we support these recommendations.

We generally agree with the OIG's recommendation that there be increased monitoring of EDX testing, however, we want to ensure that increased monitoring is focused on truly fraudulent billing. We recognize that CMS is concerned with the cost-effectiveness of medical reviews; thus, we believe that the criteria used for flagging potential fraud and overpayments in this area will be important. As such, we recommend using the following measures of questionable billing as guidelines:

- **NCSs performed without EMGs.** It is our opinion that the performance of NCSs without needle EMG has the potential of compromising patient care. It is in the best interest of patients, in the majority of situations, for the needle EMG and the NCS examination to be conducted and interpreted together on-site in real time. In the opinion of the AANEM and AAPM&R these studies are potentially incomplete because EMGs and NCSs should be performed together in the vast majority of cases.[2] NCS alone may be appropriate in some clinical situations, based on the physician's discretion, but should not comprise the majority of a practitioner's cases.

- **Significant distance between the location where a beneficiary is studied and the location of the interpreting physician.** This is often a sign of NCSs being performed without supervision of a trained EDX physician and in violation of the Current Procedural Terminology requirement of on-site real time interpretation.[3]

- **Significant claims filed by those unlikely to have the necessary skills and training** (e.g., non-neurologists, non-physiatrists). As stated above, 1,462,532 EMG studies and NCSs were performed by physicians (1,223,777), nurses (22,589) or independent testing facilities (216,166) that were not listed as PMR or neurology, pain management/interventional pain management. Neurologists and physiatrists learn how to perform EDX studies during their 4 year residency or during a 1 year fellowship program. Neurologists and physiatrists are specially trained in disorders diagnosed with EDX studies such as neuropathies, myopathies, amyotrophic lateral sclerosis, myasthenia gravis and other disorders of the muscles and nerves.

- **Unusual number of tests performed on the same day on the same beneficiary.** With the new CPT codes, a physician should not bill a significantly high percentage of cases involving 11-12 NCSs (CPT 95912); 13 or more NCSs (CPT 95913) or 1-2 NCSs (CPT 95907). The CPT guidelines provides a reasonable maximum number of studies performed per diagnostic category necessary for a physician to arrive at a diagnosis in

[2] AANEM. (2014) Proper Performance of EDX Testing. Retrieved from: http://www.aanem.org/getmedia/bb554358-c686-4482-8669-78bdc2ca7e70/MandNPS.pdf.aspx.
[3] AANEM. (2014) What Does 'On Site' and 'Real Time' Mean? Retrieved from: http://www.aanem.org/getmedia/46daa3e7-f884-4193-9ea8-ea73209aa74c/Defintion-of-Real-Time-Onsite.pdf.aspx.

90% of patients with that final diagnosis. However, the appropriate number of studies to be performed is based upon the physician's discretion.

We also have concerns about using modifiers 25 and 59 to identify potential fraud. –Modifier 25 may be used frequently and appropriately by neurologists and physiatrists who see patients with complex conditions or symptoms. Typically, when a patient has been referred with only a very general description of the symptoms, it is necessary to perform a more extensive evaluation and management service than is inherent in the EDX codes.[4]

With regard to modifier 59, there is a significant amount of confusion and conflicting guidance on the proper use of this modifier. Therefore, we do not believe that this should be used as an indicator of potential fraud. Many worker's compensation carriers expressly require physicians to use this modifier when, for example, they are performing a test on more than one limb. Furthermore, given Medicare's intention to revise modifier 59 with the creation of four new level II HCPCS modifiers defining subsets of conditions within modifier 59 when reporting a "Distinct Procedural Service," it is likely to cause confusion and will take physicians' offices some time to adjust to this new coding process.

Both CMS and MACs routinely limit Medicare payment to services that the agency has determined to be "reasonable and necessary" for the diagnosis or treatment of illness or injury. However, we urge CMS to encourage the MACs to work with the AANEM and AAPM&R to determine when electrodiagnostic studies are "reasonable and necessary."

We appreciate the OIG's and CMS' efforts in this area, and would be pleased to assist in any physician educational or other outreach efforts conducted by the agency to reduce potentially inappropriate or fraudulent performance of these important tests.

Sincerely,

Vince Tranchitella, MD
AANEM President

Phillip R. Bryant, DO
Chair, AAPMR Reimbursement and Policy Review Committee

[4] AANEM. (2012) Billing for Same Day Evaluation and Management and Electrodiagnostic Testing. Retrieved from: http://www.aanem.org/getmedia/9c053e7c-f4ec-447a-8ea8-9413a7cfee79/E-and-M-With-Same-Day-Testing-final.pdf.aspx.