



# JW | Health e-Alert

An important health care law update from the law firm of Jackson Walker.

September 25, 2012

## Resources

JW Health Care  
Practice Area

JW Health Care  
Attorneys

JW HealthBrief  
Newsletter

Contact JW

[www.jw.com](http://www.jw.com)

## Offices

**Austin**  
100 Congress Avenue  
Suite 1100  
Austin, TX 78701

**Dallas**  
901 Main Street  
Suite 6000  
Dallas, TX 75202

**Fort Worth**  
777 Main Street  
Suite 2100  
Fort Worth, TX 76102

**Houston**  
1401 McKinney Street  
Suite 1900  
Houston, TX 77010

**San Angelo**  
301 W. Beauregard  
Avenue  
Suite 200  
San Angelo, TX 76903

**San Antonio**  
112 E. Pecan Street  
Suite 2400  
San Antonio, TX 78205

## OIG Increases Scrutiny of "Modifier 25"

By Jed Morrison

Medicare payment rules normally do not permit additional payments to physicians for evaluation and management (E/M) services performed on the same day as a therapeutic procedure. However, if the E/M services are "significant, separately identifiable, and above and beyond the usual preoperative and postoperative care" normally associated with the procedure, a separate claim using "Modifier 25" may be submitted to receive an additional payment.

Some providers overuse Modifier 25, however. In two recent prosecutions, the OIG and federal prosecutors have settled with physicians who allegedly misused Modifier 25 to receive payments for services that did not meet those requirements. In the most recent case last week, a major Georgia oncology practice agreed to pay more than \$4 million to settle claims that it overbilled Medicare for the use of Modifier 25. The \$4.1 million civil settlement between Georgia Cancer Specialists I, PC and the U.S. Department of Justice settled claims that the Atlanta practice violated the False Claims Act by misusing Modifier 25. Although the Georgia practice did not admit any wrongdoing, it settled the claims "in lieu of an expensive and protracted legal process."

It's not just the OIG, but all four Medicare recovery audit contractors (RACs) list on their websites that evaluation and management services during the global surgery periods for both major and minor procedures are under review.

Physician practices should note that the use of Modifier 25 should be unusual and sporadic, not a regular practice. In fact, even if used appropriately for *every* encounter a provider has with *every* patient (one surgical procedure and one E/M service), mathematically, Modifier 25 should be used on no more than 50 percent of items billed. In November, 2005, the OIG produced a comprehensive report on the misuse of Modifier 25. The OIG concluded in that report that in the sample claims in its review, some 35% of the claims for Modifier 25 did not meet program requirements.

While inadvertent or occasional misuse of Modifier 25 might simply result in a program overpayment recovery request, routine or frequent misuse of Modifier 25 can be considered willful and in violation of the False Claims Act, subjecting the provider to penalties of up to \$11,000 per claim in addition to the refunded amounts. Providers should be careful that they have properly documented in the medical chart the appropriate use of Modifier 25.

If you have any questions about the use of Modifier 25, please contact **Jed Morrison** at 210.978.7780 or [jmorrison@jw.com](mailto:jmorrison@jw.com) or any member of the **Jackson Walker L.L.P. Health Care Section**.

---

If you wish to be added to this e-Alert listing, please **SIGN UP HERE**. If you wish to follow the JW Health Care group on Twitter,

please **CLICK HERE**.

Austin

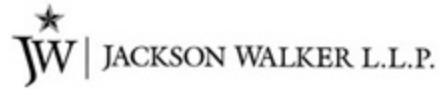
Dallas

Fort Worth

Houston

San Angelo

San Antonio



*Health e-Alert* is published by the law firm of Jackson Walker L.L.P. to inform readers of relevant information in health care law and related areas. It is not intended nor should it be used as a substitute for legal advice or opinion which can be rendered only when related to specific fact situations. For more information, please call 1.866.922.5559 or visit us at [www.jw.com](http://www.jw.com).

©2012 Jackson Walker L.L.P.

Click here to unsubscribe your e-mail address  
901 Main Street, Suite 6000 | Dallas, Texas 75202