



OIG Issues Advisory Opinion on Free Transportation Services

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The Office of Inspector General (“OIG”) posted its most recent advisory opinion addressing a transportation program on October 21.¹ This opinion analyzed a plan for a free van shuttle service provided by an integrated health system. OIG concluded that this program could potentially result in prohibited remuneration under the Anti-Kickback Statute if the requisite intent was present, but OIG would not impose administrative sanctions on the system operating the program.

I. Factual Background

The parties requesting the opinion (“the Requestors”) are a community hospital, a medical center, and a clinic operating as part of an integrated health system (“System”). The System also operates a second community hospital and an ambulatory surgery center. The System’s physicians are bona fide employees, aside from some independent physicians practicing at the System’s second community hospital (which is not a Requestor to the opinion). These independent physicians are not compensated by the System.

The System serves residents in a rural state, and the Requestors are located in an area that has limited access to public transportation. There is no public transportation to two of the Requestors, and the two local private taxi services only operate during limited hours. The Requestors submitted evidence “suggesting that the lack of affordable transportation in the region served by the System constitutes a barrier to health care access for residents.”²

Under the proposed transportation plan, the System would offer a free van shuttle service between its facilities and stop at a “drop-off and pick-up” location in the center of town. There would be two shuttle circuits, each serving multiple facilities, running ten times daily. Individuals would be transported without regard to their health insurance status or payment ability. The System certified that the vans would not be equipped or operated as ambulances, and no marketing of health care services would occur during the transportation. The System also certified that it would bear the cost of the shuttle service, and it would not pass these costs onto Medicare, a state health program, other payers or individuals.

II. Legal Analysis

OIG’s legal analysis lists eight reasons why the System would not be subjected to sanctions under the Anti-Kickback Statute.

- First, the service would be offered without regard to the past or anticipated volume or value of Federal health care program business for the System. Unlike arrangements where free transportation is offered to patients based on their diagnoses, conditions, treatments, or type of insurance coverage, this service would be offered to all patients needing health services at one of the System’s facilities on the shuttle route.
- Second, the transportation is not air, luxury, or ambulance-level transportation, and is thus less likely to be an improper inducement.

¹ *OIG Advisory Opinion No. 15-13*, OFFICE OF INSPECTOR GENERAL, Oct. 21, 2015, available at <http://oig.hhs.gov/fraud/docs/advisoryopinions/2015/AdvOpn15-13.pdf>.

² *OIG Advisory Opinion No. 15-13* at 3.

- Third, the van drivers would not be paid on a per-person or per-patient-transported basis. OIG has stated its opposition to this “problematic” pay structure, so paying drivers a salary, rather than paying based on volume, is a safer arrangement.
- Fourth, this transportation would be offered only locally. This program is distinguishable from transportation programs where facilities offer free transportation to beneficiaries outside the local service area to “leapfrog” competitor facilities.
- Fifth, the transportation program would not be marketed or advertised to the general public, and no marketing of health care services to patients would occur during the transportation. OIG notes that advertising free transportation to the public heightens the risk that the arrangement is being offered as an inducement, and marketing health services to patients using the free transportation can induce medically unnecessary services.
- Sixth, the System itself, not Medicare, a state health care program, other payers or individuals, would bear the costs of the shuttle service.
- Seventh, the service would be unlikely to subsidize the practices of private physicians. Only three private physicians have offices on the campus of one facility served by the shuttle route; OIG stated that these facts make it unlikely that a purpose of the arrangement is to induce referrals to the System’s facilities by these physicians
- Eighth, public transportation in the area is limited, and there is no public transportation to the medical center and one of the hospitals. The shuttles would offer patients alternative means of transport, and thus facilitate access to health care services.

For these reasons, OIG concluded that the proposed arrangement does not pose more than a minimal risk of fraud and abuse. OIG would not pursue sanctions for this arrangement, despite the fact that the value of this transportation could pass the nominal value thresholds of \$10 per transport or \$50 on an annual basis. Although OIG proposed a safe harbor rule for free public transportation in October 2014, this rule has not been finalized.³ Thus, this latest guidance clarifies OIG’s current position and offers some insight on what may be acceptable under OIG’s final rule.

³ Medicare and State Health Care Programs: Fraud and Abuse; Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements and Gainsharing, 79 Fed. Reg. 59,717 (Oct. 3, 2014) available at <http://www.gpo.gov/fdsys/pkg/FR-2014-10-03/pdf/2014-23182.pdf>.

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