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Client Alert

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OIG APPROVES FREE IN-HOME CARE BY HOSPICE VOLUNTEERS TO NON-HOSPICE PATIENTS

In an Advisory Opinion issued November 2, 2012 and posted November 9, 2012, the Office of Inspector General (OIG) examined a proposal by a hospice to establish a volunteer program providing non-skilled services in the homes of terminally ill patients who do not qualify for hospice services. OIG Advisory Opinion No. 12-17 (click here[1] to access Advisory Opinion). The OIG concluded that although the arrangement potentially could generate remuneration prohibited by the anti-kickback statute if the requisite intent to induce referrals was present, the arrangement would not result in civil monetary penalties because numerous safeguards protected the federal healthcare programs from the risk of fraud and abuse.

The requestor of the Advisory Opinion was a non-profit, hospital-based hospice funded largely through Medicare, Medicaid and private insurance. It proposed to provide free non-skilled services, such as companionship, transportation, errands, food preparation, respite and assistance with reading and writing, to certain non-hospice patients. To qualify, a patient must be terminally ill with a life expectancy of one year or less if the illness runs its normal course, yet not eligible for hospice because the patient is projected to have more than 6 months to live or because they do not wish to forego curative treatment. Such services would be offered only to patients in their homes, and would not be available to skilled nursing facility residents.

The services would be provided only by unpaid volunteers, and would be overseen by an employed volunteer coordinator. All expenses, including the salary of the volunteer coordinator, would be separately tracked and not included on the hospice's cost reports. Referrals for such volunteer services would come from the affiliated hospital or other community hospitals, physicians or from families. The service would not be marketed to the community at large, but only to hospital case managers, and to physicians and family members only upon request. Patients would be provided with a letter explaining their right to choose a provider of home health or hospice and a list of known agencies in the service area.

On these facts, the OIG noted that patients who receive the free in-home services may seek hospice services in the near future and also might be relieved of a financial burden as they otherwise might have to pay for the

1 https://oig.hhs.gov/fraud/docs/advisoryopinions/2012/AdvOpn12-17.pdf

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support services. Therefore, the arrangement was seen as potentially influencing patients to select the requestor as a hospice provider. However, the OIG found that the following factors adequately protected against the risk of fraud and abuse:

- The requestor did not market the program in the community and patients were given information about other hospice and home health providers so that their right to exercise freedom of choice was preserved;
- Costs to federal health care programs would be unlikely to increase since the volunteers are unpaid and costs of the services will not be included on cost reports or otherwise passed on to the federal health care programs;
- A patient's decision to elect hospice care was perceived to be largely driven by the patient's comfort level with giving up curative care, not by the availability of services under the proposed arrangement; in other words, the hospice requirement that a patient must forego curative care acts as a safeguard against hospice overutilization. In a footnote, and without explanation, the OIG concluded that the arrangement also would be unlikely to influence patients to utilize the affiliated hospital for inpatient or outpatient services.

While this Advisory Opinion has no application other than to the requestor and the specific facts presented, it provides useful guidance to other providers who may wish to implement similar programs. Careful consideration should be given, however, before launching any volunteer program that veers even slightly from the requestor's proposed model. For instance, it is unlikely that a similar volunteer arrangement would be approved for a for-profit provider, or for free services in a nursing facility setting.