



Client Alert



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OIG Allows Hospital to Compensate Physicians for Providing Emergency Department Call Coverage

In Advisory Opinion No. 12-15, posted October 30, 2012, the Department of Health and Human Services' Office of Inspector General ("OIG") signaled its continued acceptance of properly structured paid call arrangements whereby hospitals compensate physicians for providing call coverage for emergency departments. While the Advisory Opinion does not offer much new or additional insight into the OIG's thinking on the issue, it does provide comfort to hospitals that adopted paid call systems in light of the OIG's earlier opinions on the topic (see Advisory Opinions Nos. 09-05 and 07-10).

In the Opinion, the OIG reviewed a hospital's practice of paying a per diem to physicians practicing selected specialties for providing unrestricted call coverage in the hospital's emergency department (i.e., the physician need not remain on campus, but instead has a defined period of time in which to present to the hospital after receiving a call). The hospital allocates an aggregate annual payment amount per specialty, and that annual amount is divided by 365 days to create the per diem for on-call coverage paid to physicians in that specialty. According to the hospital, this methodology results in fair market value payments because it allows for tailoring based on the likelihood that a certain specialty would be called, the number of patients the specialist would likely see in any given day, and the likelihood that the patient would require inpatient care or other follow-up. The hospital engaged an independent consultant to evaluate the per diem payment amounts and compare them to national data.

All members of the hospital's medical staff that practice in the selected specialties are able to participate in the call program. To participate, the physician must execute written agreements that include certain requirements, including defined response times, an obligation to provide follow-up care as needed by the patient, medical record requirements, and mandatory participation in certain hospital committees. Finally, the physician must agree to provide care to any patient regardless of payor status.

As with the previous Opinions, the OIG cautioned that the arrangement at issue could technically implicate the federal Anti-Kickback Statute and would fail to qualify for safe harbor status, but that it would decline to seek sanctions against the hospital. Factors of importance to the OIG included:

- The independent consultant found that the hospital's payment rates were commercially reasonable and within the range of fair market value.
- The hospital sets an annual payment cap per specialty, mitigating the risk that payments are determined in a manner that would reward high referrers.
- The participating physicians are required to provide actual and necessary services for which they are not otherwise compensated, including the provision of follow-up care, often to uninsured patients.
- All members of the medical staff that practice in the selected specialties are able to participate.
- No costs of the program are shifted to federal or state healthcare programs.

A copy of the Advisory Opinion is available by clicking [here](#).¹

¹ <https://oig.hhs.gov/fraud/docs/advisoryopinions/2012/AdvOpn12-15.pdf>

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