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OIG Issues Advisory Opinion Permitting Free Hospital Shuttle Service between Health Care System Facilities

The Office of the Inspector General (OIG) recently issued a favorable [advisory opinion](#) (Advisory Opinion) to an integrated health care system (System) regarding a proposed arrangement whereby the System would provide a free shuttle service between its various medical facility locations (Arrangement). The OIG concluded that, while the Arrangement has the potential to generate prohibited remuneration under the federal Anti-Kickback Statute (AKS) and the Civil Monetary Penalties Law (CMP), it would not impose administrative sanctions on the System because the Arrangement presents only a minimal risk of fraud and abuse. The Advisory Opinion is summarized below.

THE ARRANGEMENT

The System is a large, integrated health system located in a rural area. It consists of a medical center (Medical Center), a community hospital (Community Hospital A), and a physician clinic (collectively, the Requestors). It also includes a smaller community hospital (Community Hospital B) and an ambulatory surgical center (ASC). All physicians practicing at the Medical Center, Community Hospital A, and the ASC are employees of the System. However, Community Hospital B uses both physicians employed by the System and independent physicians (Independent Physicians) who are not compensated by the System.

The System's facilities serve communities with limited access to public transportation. As an example, there is no public transportation to the Medical Center or Community Hospital A. To improve access to its facilities, the System proposed to offer a free shuttle service to certain of its facilities. Under the Arrangement, the shuttles would run along at least two routes, including a central pick-up and drop-off location. The first route would stop at the Medical Center, Community Hospital B, the ASC, and the pick-up/drop-off location. The second would stop at the Medical Center and Community Hospital A. Importantly, the shuttle would not transport patients from the Independent Physicians' offices to Community Hospital B or any other System facility.

The System would offer the shuttle service to all patients and their families, regardless of health insurance status or past or expected referrals of federal health care program business. The shuttle service would not be publicly advertised; instead, the System would only inform its existing patients and the existing patients of the Independent Physicians who practice at Community Hospital B. The shuttles would provide transportation only and would not be equipped to provide medical treatment during the transport. No marketing would occur during the shuttle rides. All shuttle drivers would be System employees and would not be paid based on the number of patients transported. Finally, the System would bear all costs associated with the shuttle service and would not shift any costs to any payors, including federal or state health care programs.

THE ANTI-KICKBACK STATUTE

The AKS makes it a crime to knowingly and willfully offer or receive remuneration to induce or reward referrals of items or services reimbursable by a federal health care program. Violation of the AKS may also lead to the imposition of civil monetary penalties and exclusion from federal health care programs. Further, CMP imposes civil monetary penalties against any person who offers or transfers remuneration to a Medicare or state health care program beneficiary to influence the beneficiary's choice of a particular provider for which payment may be made by Medicare or the state health care program. The OIG has previously stated that incentives of nominal value—meaning no more than \$10 per item or \$50 total per year—may be provided to beneficiaries without violating the CMP.

OIG FINDINGS

The OIG found that the free transportation could impermissibly induce federal and state health care program beneficiaries to obtain reimbursable items or services from the System, and the value of the services could exceed \$10 per transport or \$50 per year; however, the OIG determined that the Arrangement presents only a minimal risk of fraud and abuse under the AKS and the CMP. In analyzing the Arrangement, the OIG highlighted the following safeguards that minimize the risk that the Arrangement might violate the AKS or CMP.

1. The availability of the shuttle service would not be determined by patients' health insurance status or ability to pay for medical services. Furthermore, it would be offered to all patients and not restricted based on conditions or treatments; therefore, the Arrangement is distinct from questionable situations in which free transportation is only provided to patients with certain diagnoses, conditions, treatments, or type of insurance, which are more likely to result in overutilization and/or increased costs incurred by federal and state health care programs.
2. The shuttle vans that would be used to transport patients are relatively modest and less likely to induce patients to choose the System's health care services than luxury, air, or ambulance transportation.
3. The van drivers would not be compensated based on patient volume and would not implicate the OIG's long-standing concern of compensating drivers based on the volume of federal or state health care program beneficiaries it transports to the providers.
4. The longest route the vans would travel is 18 miles, making it unlikely that the free shuttles would be used to attract patients from competing medical facilities outside of the System's primary service areas.
5. The Arrangement would not be marketed or advertised to the general public, making it less likely that it would induce referrals.
6. The costs of the shuttle would not be passed on to Medicare, state health care programs, other payers, or individuals.
7. The shuttle would not transport patients from the Independent Physicians' offices to System facilities and, therefore, would be unlikely to provide any benefit to these physicians. The OIG found that the Arrangement's purpose is not to induce the Independent Physicians to refer patients to the System nor is the effect of the Arrangement to encourage patients to select the Independent Physicians over other providers.
8. Lastly, the availability of local public transportation is limited in the area surrounding the System. The Arrangement would therefore facilitate access to health care services by providing a means of accessing the System's medical facilities.

CONCLUSION

While the Arrangement does implicate the AKS and the beneficiary inducement prohibition of the CMP, the OIG found that the above-listed safeguards in the Arrangement's structure present only a minimal

risk of fraud and abuse. The OIG thus concluded that it would not impose administrative sanctions on the Requestors in connection with the Arrangement. While the Advisory Opinion is limited to the Requestors and the specific facts of the Arrangement, organizations contemplating a free shuttle service to their health care facilities may be well served to carefully review the OIG's interpretation of the AKS and the CMP set forth in the Advisory Opinion.

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