

Insights

OIG Advisory Opinion on Free or Reduced-Cost Lodging and Meals

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By: Meghan M. Linvill McNab and Brian M. Heaton

On March 10, 2017 the Department of Health and Human Services, Office of Inspector General ("OIG") published Advisory Opinion No. 17-01 regarding a hospital system's proposal to provide free or reduced-cost lodging and meals to certain financially needy patients ("Proposed Arrangement"). The OIG ultimately determined that it would not impose sanctions under the Anti-Kickback Statute ("AKS") or the Beneficiary Inducements Civil Monetary Penalties ("CMP") for the Proposed Arrangement. The following is a brief summary of the facts regarding the Proposed Arrangement and OIG's position. A copy of the Advisory Opinion is available at the following website: <https://oig.hhs.gov/fraud/docs/advisoryopinions/2017/AdvOpn17-01.pdf>

The Requestor owns and operates an academic medical center, comprised of four hospitals. One of the hospitals provides specialized services (organ transplant and advanced outpatient cancer treatment) to patients who reside in rural and medically underserved areas. Under the Proposed Arrangement, the Requestor would help certain patients who reside in rural or underserved areas access services they may not be able to obtain locally by offering a free or reduced-cost stay in a local hotel for one night before and up to two nights after treatment at the hospital. The Requestor would also provide free or reduced-cost hospital cafeteria meals, up to \$15 per overnight stay. In the Proposed Arrangement, the Requestor set forth a number of attributes that patients would have to meet to qualify for the free or reduced-cost lodging and meals, including travel distance, residence location, income, appointment time, and follow-up requirements ("Eligible Patients"). Eligible Patients would be identified by hospital staff after the patients have already been scheduled for treatment, and the decision of whether to give free or reduced-cost lodging and meals would be based on a sliding scale of the patient's annual household income as a percentage of the poverty level. The Proposed Arrangement would be subject to ongoing audit and monitoring and would not be advertised or marketed to patients.

The OIG ultimately concluded that the Proposed Arrangement implicates both the Anti-Kickback Statute ("AKS") and the Beneficiary Inducements Civil Monetary Penalties ("CMP"), but that the Proposed Arrangement (1) would not constitute grounds for sanctions under the Beneficiary Inducements CMP and (2) would not subject Requestor to administrative sanctions under the AKS.

The OIG states that the Proposed Arrangement would not result in sanctions under the Beneficiary Inducements CMP because the lodging and meals provided would satisfy the requirements of the Promotes Access to Care



Exception, as the Proposed Arrangement would improve a beneficiary's ability to obtain items and services payable by Medicare or Medicaid, and the remuneration provided under the Proposed Arrangement poses a low risk of harm to Medicare and Medicaid beneficiaries and the Medicare and Medicaid programs.

The OIG also determined that, although the lodging and meals would constitute remuneration provided to Federal health care beneficiaries under the AKS, for the same reasons as the OIG's CMP determination, it would not subject Requestor to sanctions under the AKS.

It is important to note that the Advisory Opinion is limited to the Proposed Arrangement and is not to be relied upon by any person or entity other than the Requestor. The Advisory Opinion should also be considered in conjunction with previous OIG guidance on related patient assistance initiatives.

If you have questions regarding this Advisory Opinion or a provider's ability to provide free or reduced-cost amenities to patients, please contact Meghan M. Linvill McNab or Brian M. Heaton.