Insights

Clearing the Path to Care: OIG Continues to Approve Modest Patient Incentives to Accessing Health Care Services

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A recent advisory opinion from the Office of Inspector General ("OIG") provides welcome clarity and encouragement to community health centers looking for ways to incentivize patient access to care. Advisory Opinion 25-02 continues the OIG's favorable support of strategies designed to connect underserved individuals with needed care, while also reminding health centers to be mindful of federal fraud and abuse laws when implementing these strategies.

In Advisory Opinion 25-02, the OIG evaluated a Federally Qualified Health Center's ("FQHC") proposal to offer free non-medical services, such as childcare, legal aid, and access to food or baby supplies ("Additional Services") to its patients, including individuals who hadn't seen a primary care provider in the past year. FQHC staff would then offer such individuals an unbiased, alphabetized list of local providers, including the FQHC, and could get help scheduling an appointment with any provider of their choice.

The OIG concluded that the Additional Services combined with the FQHC's self-referral, implicated the Anti-Kickback Statute ("AKS") and Beneficiary Inducements prohibition under the Civil Monetary Penalties Law ("CMPL"). Despite this, the OIG concluded the proposal posed a low risk of fraud and abuse due to its strong safeguards, including the non-promotional nature of the provider list, the FQHC's "any willing provider" policy, and the option for individuals to receive services even if they do not pursue medical care.

This isn't the first time the OIG has offered favorable guidance to FQHCs exploring thoughtful patient engagement. In Advisory Opinion 20-08, the OIG approved a program where an FQHC offered modest gift cards to families of pediatric patients who had missed multiple preventive care visits, citing the low risk of steering and the intent to reduce underutilization. Likewise, in Advisory Opinion 12-21, the OIG approved $20 grocery store gift cards to incentivize screenings, again noting that the offer was limited to already-assigned Medicaid patients and wasn't advertised broadly.

These opinions, while supportive, also underscore a critical point, even well-intentioned patient incentives can implicate the AKS and the CMPL, particularly when Medicare and Medicaid beneficiaries are involved. This is why health centers and providers must always analyze each proposed arrangement carefully and build in appropriate safeguards to minimize risk and ensure compliance with fraud and abuse laws. Equally important, these opinions, while limited to FQHCs, may inform compliance strategies for all providers. Providers considering similar programs should closely study these opinions and consult legal counsel to tailor compliant solutions to their unique context.

If you have questions about your organization's patient incentive programs, please contact Brandon Shirley for further advice and consultation.

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