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Insights

OIG Advisory Opinion No. 18-08: Fire Departments' Mutual Aid Agreements

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On August 7, 2018, the Office of Inspector General (OIG) issued Advisory Opinion No. 18-08, which evaluated a proposal by six government-operated fire departments (the "Departments") to enter into a mutual aid agreement to provide unscheduled, backup emergency ambulance services ("Backup Services") and to bill for such services according to the billing practices of the jurisdiction in which such services are rendered (the "Proposed Arrangement"). The OIG concluded that the Proposed Arrangement would not constitute grounds for the imposition of civil monetary penalties and that the OIG would not impose administrative sanctions on the Departments.

The Departments – all of which are from the same county – each own and operate an ambulance service that serves their respective jurisdictions. The Departments bill patients' insurers, including Federal healthcare programs, when furnishing emergency ambulance services to insured patients and charge ambulance user fees to patients who are not covered by Federal healthcare programs. However, the Departments bill differently in the following way: (i) four of the Departments ("Departments 1-4") bill both residents and non-residents for cost-sharing amounts (e.g. deductibles and copays) for the emergency ambulance services they provide in their respective jurisdictions and (ii) two of the Departments ("Departments 5-6") bill only non-residents for these cost-sharing amounts, treating local tax revenue as payment in full for any cost-sharing amounts owed by their residents.

Under the Proposed Arrangement, the Departments would enter into a mutual aid agreement, whereby they would provide Backup Services within adjoining Departments' jurisdictions when the other Departments temporarily exhaust their emergency response resources. Departments providing Backup Services would not receive financial remuneration from the requesting Department, and would bill patients according to the practices of the Department in the jurisdiction where the services were rendered. This would include billing or waiving cost-sharing amounts and billing ambulance user fees based upon the local Department's fee schedule.

For example: if Department 1 were to provide Backup Services in Department 5's jurisdiction to a resident of that jurisdiction, Department 1 would not bill for the resident's cost-sharing amounts – even though Department 1 would have done so if it provided those services in its own jurisdiction. Additionally, if the resident was not a Federal health care program beneficiary, Department 1 would bill the patient for the applicable ambulance user fee set forth in Department 5's fee schedule.

Under the Proposed Arrangement, Departments would not bill certain patients, some of whom are Federal health care program beneficiaries, for cost-sharing amounts owed for Backup Services – thus implicating the Anti-Kickback Statute (the "AKS"). The OIG maintains a long-standing concern about potentially abusive

waivers of Medicare cost-sharing amounts under the AKS. Nevertheless, the OIG concluded that the Proposed Arrangement presents a low risk of fraud and abuse under the AKS for the following primary reasons:

- Departments would provide Backup Services only when adjoining Departments exhaust their resources. The Proposed Arrangement does not relate in any way to the number of Federal health care program beneficiaries receiving Backup Services or the related reimbursement. The Proposed Arrangement would not take into account the volume or value of Federal health care program referrals or other business generated by and among the Departments.
- The Proposed Arrangement would be unlikely to increase demand for or utilization of ambulance services – or the associated costs – since individuals within a particular Department's jurisdiction would be treated the same for billing purposes, regardless of which Department provided the Backup Services.
- The Proposed Arrangement would not implicate the Beneficiary Inducements Civil Monetary Penalty Law. Because the Departments would be following the billing practices of the Department in the jurisdiction where the services are rendered, the waiver of cost-sharing amounts would not influence individuals to receive emergency ambulance services from a particular supplier.

The OIG concluded that (i) the Proposed Arrangement would not constitute grounds for penalties under Section 1128A(a)(5) of the Social Security Act and (iii) although the Proposed Arrangement could potentially generate prohibited remuneration under the AKS if the requisite intent to induce or reward referrals of Federal health care program business were present, the OIG would not impose administrative sanctions upon the Departments pursuant to Sections 1128(b)(7) or 1128A(a)(7) of the Social Security Act (as those sections relate to the commission of acts described in the AKS).
The OIG notes that this Advisory Opinion may only be relied on by the Departments and is limited to the Proposed Arrangement.