

Office of Inspector General Approves Waiver of Copayments and Deductibles for Ambulance Services to Residents of Fire District

On April 25, 2003, the Office of the Inspector General (“OIG”) of the U.S. Department of Health and Human Services, issued an advisory opinion allowing a municipal corporation to treat tax revenues from residents as payment of copayments and deductibles. The OIG said that the proposed practice did not violate the federal anti-kickback statute. The advisory opinion was in response to an inquiry from a fire protection district that owned an ambulance service and was the exclusive provider of emergency medical services in its service area. The fire district did not subcontract its services. The fire district adopted an ordinance under which it billed residents only to the extent of their insurance coverage. The fire district treated the revenues from local taxes as payment of any applicable copayments and deductibles.

The fire district was concerned that its ordinance might violate the federal antikickback statute. The anti-kickback statute makes it a criminal offense knowingly and willfully to offer, pay solicit, or receive anything of value to induce referrals of items or services reimbursable by a federal health program. In 1994, the OIG issued a Special Fraud Alert emphasizing its concern over potentially abusive waivers of Medicare copayments and deductibles. The OIG generally views such waivers of copayments and deductibles as prohibited attempts to induce referrals.

However, the OIG approved the fire district’s ordinance on the basis of a special rule for providers that are owned and operated by municipal corporations. The Centers for Medicare and Medicaid Services (“CMS”) Carrier Manual states in section 2309.4:

A [state or local government] facility which reduces or waives its charges for patients unable to pay, or charges patients only to the extent of their Medicare and other health insurance coverage, is not viewed as furnishing free services and may therefore receive program payment.

The OIG reasoned that because CMS would not require the fire district to collect copayments or deductibles from residents, the OIG would not impose sanctions under the antikickback statute if the fire district waived copayments and deductibles for residents. The OIG cautioned that this exemption applied only to bona fide residents or the employees of bona fide residents. The OIG also emphasized that the exemption applied only to situations in which the governmental unit is the ambulance supplier. If a municipality contracts with an outside ambulance supplier to provide services to residents, the municipality cannot require the ambulance supplier to waive coinsurance amounts unless the municipality pays the coinsurance.

As with all OIG advisory opinions, the OIG cautioned that the opinion has no application to, and cannot be relied upon by, any other entity. However, other municipalities can rely on the exemption in the CMS carrier manual on which the OIG based its advisory opinion. The OIG's opinion appears to be a reasonable interpretation of the provision in the CMS manual that allows state or local government facilities to waive or reduce copayments or deductibles for residents. Some Washington state public hospital districts have implemented similar programs in the past and, in light of this advisory opinion, other public hospital districts may now wish to consider the viability of a similar program. A copy of the OIG Advisory Opinion is available online at: <http://oig.hhs.gov/fraud/docs/advisoryopinions/2003/ao0309.pdf>.

**SPECIAL ADVISORY BULLETIN
WARNS AGAINST SUSPECT JOINT
VENTURES**

The Office of the Inspector General ("OIG") of the U.S. Department of Health and Human Services has issued a Special Advisory Bulletin warning that certain joint ventures may violate the antikickback statute. The Bulletin focuses on joint ventures where a healthcare provider in one line of business (the "Owner") expands into a related business by contracting with an existing provider of a related item or service ("Supplier"). Generally, the Supplier manages the new line of business and often will supply it with inventory, employees, space, billing and other services. The OIG generally disapproves of this type of arrangement if the result is the Owner con-

tracting out the entire line of business to a potential competitor and receiving in return the profits as compensation for referrals of patients insured by federal programs.

The OIG identified several indicia of a suspect joint venture. For example, an Owner may seek to expand into a new line of business to provide a service to its existing patient base. The Owner's primary contribution is referrals. The Owner has little or no financial risk. The Supplier is an entity that would normally be a competitor for the new line of business. The Supplier provides many of the key services, such as management, billing, equipment, personnel, and office space. The Owner's compensation takes into account the volume and value of services. An arrangement that meets some or all of the criteria may be considered suspect by the OIG under the AKS.

Of course, the presence or absence of some of these elements is not determinative of the legitimacy of a particular arrangement. In general, the opinion does not add any new analysis to its 1989 Fraud Alert as joint ventures. It may be possible to carefully structure a contractual joint venture that meets safe harbor protection under the AKS. However, the Bulletin is a warning that the OIG will look closely at joint ventures in general; and specifically joint ventures in which a new line of business is contracted out to a potential competitor. The full text of the Special Advisory Bulletin is available online at: <http://oig.hhs.gov/fraud/docs/alertsandbulletins/042303SABJointVentures.pdf>.

This and other articles on healthcare law are available on the website of Ogden Murphy Wallace, PLLC at www.omwlaw.com. For more information, contact any member of OMW's Healthcare Practice Group: Douglas E. Albright, Kent C. Meyer, Donald W. Black, Wesley Watson, Jr., Nick Beermann or Carrie Montgomery.

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