



OIG Weighs In On Clinical Co-Management Arrangements

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The Office of Inspector General (OIG) recently issued an Advisory Opinion on the legality of a co-management compensation arrangement between a hospital and physician group.

The opinion describes a rural acute care hospital that operates several cardiac catheterization laboratories. The hospital entered into an agreement with a cardiology group to provide management services at the labs. In exchange, the hospital paid a fixed payment and a performance-based fee to the physicians. The latter aligns incentives between the two parties by basing compensation on four components: employee satisfaction, patient satisfaction, quality of care, and cost savings.

The problem? According to the OIG, the potential exists for those incentive payments to induce reductions in care and prohibited referrals – both of which would violate federal law.

Civil Monetary Penalty

The Civil Monetary Penalty regulations (CMP) prohibit a hospital from making payments to a physician as an inducement to reduce or limit services to Medicare patients. Although implicating the CMP, the OIG concluded that the agreement had sufficient safeguards to protect it from being subject to CMP sanctions:

- The hospital certified that the agreement has not had an adverse impact on patient care and that a program is in place to monitor the physicians' performance.
- The risk of inappropriate medical care is minimal because the physicians have access to the supplies they determine to be the most clinically appropriate.
- The financial incentives are reasonable because they are subject to an annual cap and limited to three years.
- Receipt of the incentive payments is not conditioned on any of the following actions:
 - Curtailing the provision of patient care;
 - Increasing referrals to hospital;
 - Cherry-picking healthy patients or those with desirable insurance; or
 - Accelerating patient discharges.

Anti-Kickback Statute

The second legal hurdle for the incentive compensation arrangement is the anti-kickback statute, which makes it illegal to pay or reward physicians for making patient referrals. The OIG determined that the arrangement *could* result in a violation of the anti-kickback statute if the requisite intent were present, but ultimately sanctions would not be imposed for these reasons:

- An independent valuation firm certified that the fee paid was fair market value for the services provided.
- The compensation paid to the physicians does not vary with the number of patients treated.
- The labs are the only of their kind within 50 miles; thus, the OIG theorized the hospital was unlikely to pay the physicians to refer business to the labs instead of a competing lab.
- The specificity of the quality of care provisions ensures the goal is to improve quality rather than reward referrals.
- The agreement is limited to three years.

Co-management arrangements have become quite commonplace in the industry, as hospitals seek to align their interests with physicians in order to provide quality care that's also affordable. The takeaway from the Advisory Opinion is that by including the safeguards cited by the OIG, hospitals can improve the odds that their own (or future) co-management agreements don't run afoul of the CMP and anti-kickback statute.