PUBLICATION

OIG Approves Hospital-provided Transcription Services Arrangement in Advisory Opinion 15-15 [Ober|Kaler]

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The Office of Inspector General (OIG) recently issued Advisory Opinion 15-15 [PDF] and concluded that an arrangement under which a hospital proposed to provide transcription services to a radiology practice in exchange for fair market value compensation would not be subject to administrative sanctions for acts under the anti-kickback statute, 42 U.S.C. § 1320a-7b. The transcription services would be provided for patients referred from a third-party medical clinic to the radiology practice for the professional component of diagnostic testing performed at the clinic.

The Arrangement

The hospital and the clinic jointly requested this opinion. According to their request, both the clinic and the radiology practice were referral sources for the hospital. Clinic physicians would periodically order diagnostic tests to be performed at the hospital. The radiology practice supervised the hospital's radiology services and could influence referrals to the hospital for diagnostic and interventional radiology services. The radiology practice was described as the only radiology practice within 100 miles of both the clinic and the hospital.

The requestors described an arrangement under which the technical and professional components of diagnostic testing would be performed separately by the clinic and the radiology practice. The clinic would perform the technical component for the radiologic imaging and transmit the images to the radiology practice. The radiology practice's radiologists would be responsible for the professional component and dictate their reports. The dictated reports would be sent to the hospital for transcription and the transcribed report would be returned to the radiologist for the final report to the clinic.

The hospital proposed to bill the radiology a flat rate per line of transcription at a rate that was fair market value for the service. The clinic would not pay any of the transcription cost.

The clinic and the radiology practice would bill for their technical and professional component separately. Each would bill Medicare, Medicaid and all other third-party payors for their services.

OIG Analysis

The OIG provided some analysis of Chapter 13 of the Medicare Claims Processing Manual, Pub. No. 100-04 [PDF] and payment conditions for radiology services. Section 20.1 of that manual explains that a written report is a requirement for payment of the professional component of a radiology service. The OIG further explained that CMS advised that indirect expenses like transcription costs were included, but not separately identifiable, in the reimbursement of both the professional and technical component of the diagnostic test. CMS also advised that it takes the position that when the professional and technical components are billed separately by different providers, the providers can negotiate which provider will pay for the transcription costs.

The OIG addressed first the compensation to be paid by the radiology practice for the hospital's transcription services. With the traditional caveat that the OIG does not opine on fair market value, the OIG explained that

the hospital was entitled to bill and be paid for transcription services provided for clinic patients. Further, the hospital could bill the radiology practice for the services and, if so, no remuneration would be transferred from the hospital to the clinic under the proposed arrangement.

The OIG next determined, on the totality of the circumstances, that the radiology practice's payment of the transcription costs would not be remuneration from the practice to the clinic for the clinic's referrals to the practice for the professional component. The OIG explained initially that the risk was insubstantial in this case because CMS took the position that the transcription costs were negotiable between the parties. Not surprisingly, it also cautioned that the result would be different if the costs were specifically attributed to one party. The OIG further explained that the Medicare Claims Processing Manual required a written report as a condition of payment for the professional component and that it was appropriate for the practice to bear the cost even though both the clinic and the radiology received reimbursement for the same administrative expense.

Implications and Outlook

Advisory Opinion 15-15 reaches a logical conclusion for this arrangement; the parties are free to negotiate an administrative expense when both parties receive reimbursement for that same expense from a federal health care program. In this situation the OIG relied on both the Medicare Claims Processing Manual and CMS' view on separately billed professional and technical components to conclude that the hospital's billing for transcription services and the radiology practice's sole responsibility to pay that bill would not generate remuneration to a referral source.