

PUBLICATION

OIG Approves Health System's Complimentary Transportation Program [Ober|Kaler]

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Recognizing that a narrowly tailored complimentary transportation program may pose minimal risk of fraud and abuse, the OIG posted favorable Advisory Opinion No. 15-13 [PDF] on October 21, 2015. The Opinion approves an integrated health system's proposal to provide a free van shuttle service between its medical facilities and the local town. As described more fully below, while the OIG concluded that the arrangement potentially implicates the Anti-Kickback Statute and the civil monetary penalty provision prohibiting beneficiary inducements, the OIG stated it would not impose any sanctions in that regard.

The Opinion was requested by an integrated health system (Health System) that provides services in a rural area. The Health System operates a large tertiary care Medical Center, two community hospitals (Community Hospital A & B), a multispecialty group practice, and ambulatory surgical center (ASC). The components of the Health System at issue are described as being within 16 miles or less of the Medical Center. The Health System proposes to offer a free van shuttle service between the components of the system, with an additional pick-up/drop-off location in the town's center. There would be two separate shuttle circuits of 10 miles and 18 miles, respectively, that would run concurrently from 8 am to 6 pm Monday through Thursday. The Health System certified that the town and other communities serviced by the facilities have limited access to public transportation, and that the shuttle service would be offered to all patients without regard to their health insurance status or ability to pay for medical services.

The Health System noted in its request that all physicians practicing at the Medical Center, Community Hospital A and the ASC are bona fide system employees; however, it noted that some physicians on the medical staff at Community Hospital B are private practice physicians that are not employees. In addition, three private practice physicians lease office space from the Health System on Community Hospital B's campus.

The OIG stated that the complimentary transportation services could be considered to be more than nominal value (\$10 per trip, \$50 on an annual basis), but nevertheless concluded that the arrangement presented minimal risk of fraud and abuse for the following reasons:

1. The Health System certified that the availability of the shuttle services to patients is not determined in a manner related to past or anticipated referrals for federal health care program business. The OIG noted that while the service is limited to only certain system facilities, such facilities provide a broad range of services and the availability is not based on the patients' use of any particular provider, practitioner, supplier or item/service. Moreover, patients are transported without regard for their health insurance status or ability to pay.
2. The transportation does not include more valuable air, luxury or ambulance-level transport that are more likely to be an improper inducement.
3. The van drivers are not paid on a per-patient or per-person-transported basis, which the OIG has previously identified as potentially problematic. Instead, the drivers are Health System employees with salaries and benefits. While the Health System indicated that it may, in the future, use an outside contractor to furnish van drivers, it would not pay them on a per-patient or per-person-transported basis.

4. The shuttle service is only offered locally, with the longest circuit being approximately 18 miles. The OIG distinguished this from more problematic arrangements where transportation is provided outside of the provider's services area in an effort to leapfrog competitor facilities.
5. The Health System certified that it would not market or advertise the free transportation to the general public, including on any Health System website. Moreover, the Health System will not advertise any health care items or services to patients on the shuttle vans. The Opinion acknowledged that the shuttle vans would bear Health System signage which can be a type of marketing, but the OIG concluded this was necessary for passenger safety and unlikely to unduly influence beneficiaries to receive items or services under federal health care programs.
6. The Health System would cover the cost of the service without shifting any costs onto a federal or state health care program.
7. Recognizing that there are private practice physicians who lease space and practice at Community Hospital B, the OIG concluded that the arrangement was unlikely to subsidize the physician practices or influence patients to choose the private physicians over other practitioners for services. The OIG noted that the routes have limited pick-up and drop-off locations, and any benefits to the physicians are incidental.
8. The Health System certified to the lack of local public transportation options, and that no public transportation is available to the Medical Center or Community Hospital B.

Ober|Kaler's Comments

Through Advisory Opinion 15-13, the OIG recognizes that certain narrowly tailored complimentary local transportation programs may be permissible under the Anti-Kickback Statute and beneficiary inducement prohibition, even if such programs exceed the nominal value limits of \$10 per transport or \$50 on an annual basis. This Opinion comes as the provider community awaits the OIG's finalization of its proposal to adopt a safe harbor for complimentary local transportation programs that include specified safeguards. See "[Highlights of OIG's Proposal to Amend Safe Harbors to the Antikickback Statute and CMP Rules, and to Add New Safe Harbors](#)," Health Law Alert 2014, Issue 21. Providers who offer any transportation services to patients in the meantime are cautioned to carefully review the OIG's guidance and advisory opinions on this issue to ensure that such programs do not include potentially suspect characteristics that would cause the OIG to conclude that the program is being offered in a manner to induce federal health care program referrals or improperly influence beneficiaries.