

PUBLICATION

OIG Allows Cost-Sharing Waivers Among Fire Departments for Ambulance Services in Advisory Opinion 18-08

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A group of six government-operated fire departments has received a green light from the Office of Inspector General (OIG) to enter into a mutual aid agreement to provide backup emergency ambulance services and to bill for such services according to the billing practices in the jurisdiction where such services are rendered, including waiver of patient cost-sharing payments in some cases. The OIG reviewed the mutual aid agreement in Advisory Opinion No. 18-08, issued in August 2018, and determined that offering and billing for the backup ambulance services, as proposed by the fire departments, present a low risk of fraud and abuse under the Anti-Kickback Statute and do not constitute grounds for the imposition of penalties under the beneficiary inducement civil monetary penalties (CMP) law.

Each of the six fire departments or fire protection districts proposing to enter into the mutual aid agreement currently owns and operates an ambulance service that serves its respective jurisdiction. All six of such affiliated fire departments bill patients' insurance, when applicable, including federal health care programs. Four of the fire departments bill all patients, including residents and nonresidents, for applicable cost-sharing amounts. The other two fire departments bill nonresidents, but not residents, for applicable cost-sharing amounts (choosing instead to treat revenues from local taxes that fund the ambulance services as payment in full for any cost-sharing amounts that residents may owe). All six affiliated fire departments also charge ambulance user fees to patients other than beneficiaries of federal health care programs, which are determined by fee schedules that vary by fire department and are separate from any cost-sharing amounts that patients may owe in connection with their insurance coverage.

Under the mutual aid agreement, if an emergency arises in one affiliated fire department's jurisdiction at a time when no emergency response resources are available, an affiliated fire department from an adjoining jurisdiction would provide backup ambulance services and respond to the emergency. A fire department requesting backup ambulance services would not provide any financial remuneration to the fire department providing the backup ambulance services, and the mutual aid agreement would be completely unrelated to the number of federal health care program beneficiaries receiving backup ambulance services or federal health care program reimbursement for those services.

An affiliated fire department providing backup ambulance services to a patient in another affiliated fire department's jurisdiction would bill the patient according to the billing practices of the fire department in whose jurisdiction the services were provided – not according to the billing practices of the fire department providing the services. Accordingly, the fire department providing the backup ambulance services would bill the patient an ambulance user fee according to the fee schedule of the fire department in whose jurisdiction the services were rendered (if applicable), and the fire department providing the backup ambulance services would charge or waive the patient's cost-sharing amount in accordance with the protocol of the fire department in whose jurisdiction the services were rendered.

The OIG determined that the mutual aid agreement would implicate the Anti-Kickback Statute, but would not constitute grounds for the imposition of administrative sanctions, and would not implicate the CMP Law.

The OIG has long expressed that routine waivers of Medicare cost-sharing amounts by health care providers and suppliers may constitute prohibited remuneration to induce referrals to such health care providers and suppliers. The Anti-Kickback Statute criminalizes knowingly and willfully offering or paying any remuneration to induce a referral of services reimbursable by a federal health care program. (See Section 1128B(b) of the Social Security Act.) The mutual aid agreement among the affiliated fire departments would implicate the Anti-Kickback Statute because the agreement would require fire departments that typically charge cost-sharing amounts to residents to waive those cost-sharing amounts if the fire department in the jurisdiction where the backup ambulance services are provided does not typically charge such cost-sharing amounts to residents.

In determining that the actions pursuant to the mutual aid agreement would present a low risk of fraud and abuse under the Anti-Kickback Statute, OIG's analysis turned on two factors:

- The fire departments would only provide backup ambulance services on an as-needed, unscheduled basis and, thus, the services would not take into account the volume or value of federal health care program referrals or other business generated among the fire departments. Thus, any remuneration by a fire department in the form of a cost-sharing waiver would not induce referrals of federal health care program beneficiaries for ambulance services.
- Provision of backup ambulance services would not likely increase utilization of the emergency ambulance services or increase costs to federal health care programs. Under the mutual aid agreement, individuals within a particular fire department's jurisdiction would pay the same amount regardless of which fire department provided the ambulance services, which means the mutual aid agreement would not be likely to influence demand for emergency ambulance services.

By law, waiving cost-sharing amounts for patients also constitutes remuneration for purposes of the CMP Law, which prohibits offering or transferring remuneration to a federal health care program beneficiary that is likely to influence the beneficiary's selection of a provider or supplier of a federally reimbursable item or service. (See Sections 1128A(a)(5) and 1128A(i)(6) of the Social Security Act.) However, in Advisory Opinion No. 18-08, the OIG determined that the mutual aid agreement among the fire departments would not influence patients to receive emergency ambulance services from a particular supplier because patients would be subject to the same cost-sharing payments (or receive the same waiver of payments) regardless of which fire department provided the emergency services.

Based on its analysis that the mutual aid agreement among the fire departments was not based on and would not influence referrals for ambulance services or patient utilization of ambulance services, OIG concluded that the proposed arrangement would not constitute grounds for the imposition of penalties under the Anti-Kickback Statute or the CMP Law.

Additional Considerations for Governmental Ambulance Services

OIG Advisory Opinion No. 18-08 presents a unique spin on a longstanding body of favorable OIG guidance related to cost-sharing waivers for government-operated ambulance services. Opinion 18-08 specifically analyzes the contractual arrangement between the fire departments and its impact on billing federal health care programs for emergency ambulance services. The OIG states expressly that it does not offer an opinion on the legality of the fire departments' underlying billing practices.

However, the OIG has opined more than ten times that governmental entities operating ambulance services do not violate the Anti-Kickback Statute or the CMP Law when they treat various taxes or other governmental revenues as satisfaction of patients' cost-sharing obligations for emergency services. (Most recently, [13-17](#) and [13-14](#).)

The OIG has consistently pointed to the Centers for Medicare & Medicaid Services (CMS) Medicare Benefit Policy Manual (Ch. 16, Sec. 50.3.1), which states that "[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." CMS has confirmed that the term *facility* in this rule does include a government-operated ambulance company that is a Medicare supplier.