PUBLICATION

OIG Approves In-Home Follow-Up Care for COPD Patients in Advisory Opinion 19-03

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In Advisory Opinion 19-03, the Office of Inspector General (OIG) approved a program proposed by a medical center that has been providing free, in-home follow-up care to eligible individuals with congestive heart failure (CHF). The medical center proposed to expand its follow-up care program to patients with chronic obstructive pulmonary disease (COPD). The OIG opined that, while the proposed arrangement implicated the Anti-Kickback Statute (AKS) and the civil monetary provisions related to beneficiary inducements (Beneficiary Inducement CMP), the OIG would not impose any sanctions related to the proposed arrangement for a number of reasons, specifically noting that the benefits of the proposed arrangement outweighed the risk of any patient steering that it might produce.

Under the proposed arrangement, the requestor, a non-profit medical center, would offer free, in-home follow-up care to certain individuals with CHF and COPD whom the medical center determined were at a higher risk of readmission to the hospital. According to the medical center, the goals of the proposed arrangement are to "increase patient compliance with discharge plans, improve patient health, and reduce hospital inpatient admissions and readmissions." The proposed arrangement eligibility requirements for CHF and COPD patients include: (1) that the individual must have already presented for care at the medical center or at one of its affiliated clinic facilities; (2) that the patient must be identified by a clinical nurse as high risk for hospital inpatient readmission using an assessment tool or at high risk for hospital inpatient admission using a predictive analytics tool; (3) that the patient must have arranged to receive follow-up care at the medical center or at an affiliated clinic; (4) that the patient must be willing to enroll in the proposed arrangement after consultation; and (5) that the patient must be discharged to, or reside at, a personal residence or an assisted living facility in the medical center's service area. The medical center certified that it would not publicize the proposed arrangement on its website and, further, if a patient does not plan to seek follow-up care with the medical center, the patient would not be informed of the proposed arrangement.

Each eligible patient under the proposed arrangement would receive two visits each week from a community paramedic employed by the medical center for approximately 30 days following enrollment. Each visit would last approximately an hour, during which time the paramedic would provide a range of services, including: (1) reviewing the patient's medications; (2) assessing the need for follow-up treatment; (3) monitoring compliance with the plan of care; (4) performing a physical safety inspection of the patient's environment; and (5) providing a physical assessment of the patient. The paramedic would use an established clinical protocol to deliver interventions and to assess whether a referral for follow-up care would be necessary. If the patient requires care that falls outside of the community paramedic's scope of practice, or requires follow-up care, the paramedic will direct the patient to the patient's established provider, which may or may not be the medical center, for any follow-up treatment. The paramedic will explain to the patient that the patient may obtain additional care from the provider of his or her choice, and that the patient is not obligated to receive that care from the subject medical center.

The OIG noted that the services provided by the paramedic are not reimbursable by governmental programs (with one exception related to local Medicaid). Additionally, the OIG noted that the medical center would bill and collect for any billable follow-up services provided to the enrolled patient.

The medical center certified that it would offer the proposed arrangement to all eligible patients, regardless of insurance status or the patient's ability to pay. Finally, the medical center certified that it would not compensate any employee or contractor based on the number of patients enrolling in the proposed arrangement.

Of particular note, the OIG did not reference any of its three earlier Advisory Opinions that addressed similar situations, specifically: (1) Advisory Opinion 06-01 (an unfavorable opinion addressing a home health agency's practice of providing prospective patients with a free preoperative home safety assessment); (2) Advisory Opinion 07-16 (a favorable opinion addressing a home health agency's practice of providing prospective orthopedic patients with free educational videos containing instructions for postoperative home-based convalescence); or (3) Advisory Opinion 15-12 (a favorable opinion addressing a home health agency's policy to offer introductory visits to patients who have chosen it as their home health provider).

The OIG concluded that the proposed arrangement implicated the AKS and the Beneficiary Inducement CMP. However, the OIG determined that it would not impose sanctions because "we believe that the Arrangements' [sic] benefits outweigh any risk of inappropriate patient steering that the statute was designed to prevent." The OIG reached this conclusion based on the following five primary reasons: (1) any risk that the proposed arrangement will induce beneficiaries to choose the medical center for future health care services is mitigated because the patient has already chosen where to receive such services; (2) the risks of overutilization or unnecessary increased costs are mitigated by the fact that the services provided under the proposed arrangement are not reimbursable by governmental payers and any follow-up services would likely represent appropriate utilization – in fact, the OIG concluded that, if the goals of the proposed arrangement are met, the proposed arrangement could actually result in overall savings to the federal health care programs; (3) the proposed arrangement will not interfere with, or skew, any clinical decision making because it will not involve any compensation based on the number of enrollees or volume of follow-up services; (4) the medical center will not market or advertise the proposed arrangement; and (5) the services to be provided under the proposed arrangement "appear reasonably tailored to accomplish Requestor's goals of increasing patient compliance with discharge plans, improving patient health, and reducing hospital inpatient admissions and readmissions."

Implications for Future Free-Service Programs

Advisory Opinion 19-03 confirms that, with appropriate safeguards, the OIG is willing to approve the provision of free services offered to patients for the purposes of improving discharge planning, improving continuity of care, and reducing readmissions. As noted by the OIG, the balancing is between the patient care benefits and the potential for inappropriate patient steering, inappropriate utilization, and increased costs.

Of particular interest, the OIG specifically noted that the proposed arrangement is consistent with its August 27, 2018 Request for Information (RFI), in which it solicited public input on providers' efforts to promote and advance care coordination and value-based care. Thus, the OIG chose, "in an exercise of our discretion," not to impose sanctions under relevant law, even where a direct line can be drawn between the free services being offered and the billable follow-up care that may result from the free services.

It remains to be seen whether this is a sign of things to come in analyzing arrangements under the RFI. However, Advisory Opinion 19-03 demonstrates that, even when an arrangement clearly implicates the AKS and Beneficiary Inducement CMP, the OIG may be willing to approve the arrangement if it is designed (with appropriate safeguards) to "improve[ ] the health of patients and … decrease overall costs to Federal health care programs" in a manner that reasonably promotes care coordination and value-based care.

For more information on Advisory Opinion 19-03, contact Sandy Teplitzky or any member of the Baker Ober Health Law Group.